

UTAH

AIR QUALITY BOARD

Meeting
August 3, 2005



Department of Environmental Quality
Division of Air Quality

File



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF AIR QUALITY
Richard W. Sprout
Director

Air Quality Board
John M. Veranth, *Chair*
Ernest E. Wessman, *Vice-Chair*
Nan Bunker
Stead Burwell
Jerry D. Grover
James R. Horrocks
Dianne R. Nielson
Wayne M. Samuelson
JoAnn B. Seghini
Marcelle Shoop
Don Sorensen
Richard W. Sprout,
Executive Secretary

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

DAQ-052-2005

UTAH AIR QUALITY BOARD MEETING

FINAL AGENDA

Wednesday, August 3, 2005
1:30 p.m.

168 North 1950 West (Bldg #2) Room 101

- I. Call-to-Order
- II. Date of the Next Air Quality Board Meeting: September 7, 2005.
- III. Approval of the Minutes of July 6, 2005, Board Meeting.
- IV. Propose for Public Comment: R307-214-2, Incorporation by Reference, Various Subparts of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPS), MACT Standards. Presented by: Tim Andrus.
- V. Propose for Public Comment: Amend R307-840, Lead-Based Paint Accreditation, Certification and Work Practice Standards. Presented by: Bob Ford.
- VI. Ethics Discussion and Disclosure Statement. Presented by Fred Nelson.
- VII. Informational Items.
 - A. Compliance. Presented by: Jeff Dean.
 - B. HAPS. Presented by: Bob Ford.
 - C. Monitoring. Presented by: Bob Dalley.



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UTAH AIR QUALITY BOARD MEETING
168 North 1950 West (Bldg #2) Room 101
Draft WEB AGENDA
Wednesday, August 3, 2005
1:30 p.m.

- I. Call-to-Order
- II. Date of the Next Air Quality Board Meeting: September 7, 2005.
- III. Approval of the Minutes of July 6, 2005, Board Meeting.
 - III.a. Minutes
- IV. Propose for Public Comment: R307-214-2, Incorporation by Reference, Various Subparts of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPS), MACT Standards. Presented by: Eileen Brennan.
 - IV.a. Memo: DAQ-037-2005
 - IV.b. R307-214
- V. Propose for Public Comment: Amend R307-840, Lead-based Paint Accreditation, Certification and Work Practice Standards. Presented by: Bob Ford.
 - V.a. Memo: DAQ-045-2005
 - V.b. R307-840 1-3
 - V.c. Lead-based paint handout in Board packet is located at:
Federal links: <http://www.epa.gov/lead/notification%20final.pdf>
<http://www.epa.gov/lead/406b.pdf>
- VI. Ethics discussion and Disclosure Statement. Presented by Fred Nelson
 - VI.a. Ethics and Conflict of Interest
 - VI.b. Disclosure Statement
 - VI.c. Public Employees Ethics Act
- VII. Informational Items.
 - A. Compliance. Presented by: Jeff Dean
 - VII.A.1.
 - B. HAPS. Presented by: Bob Ford
 - VII.B.1.
 - C. Monitoring. Presented by: Bob Dalley
 - VII.C.1..... PM10 Highest Concentration June-July 2005
 - VII.C.2..... PM10 June 2005
 - VII.C.3..... PM10 July 2005
 - VII.C.4..... PM2.5 Highest Concentration June-July 2005
 - VII.C.5..... PM2.5 June 2005
 - VII.C.6..... PM2.5 July 2005

VILC.7..... 8 Hr Ozone June-July 2005
VILC.8..... Tbl PM10 June
VILC.9..... Tbl PM10 July
VILC.10.... Tbl PM2.5 June
VILC.11.... Tbl PM2.5 July

MINUTES

UTAH AIR QUALITY BOARD MEETING
August 3, 2005

MINUTES

I. Call to Order.

John Veranth called the meeting to order at 1:35 p.m.

Board members present:

Nan Bunker	Dianne Nielson	Don Sorensen
Jerry Grover	Wayne Samuelson	John Veranth
Jim Horrocks	JoAnn Seghini	Ernest Wessman
Marcelle Shoop - teleconference		

Executive Secretary: Richard Sprott

II. Next Meeting.

September 7, 2005, October 5, and November 2, 2005.

III. Minutes.

Marcelle Shoop requested that approval of the minutes be held until additional points concerning the baseline date and why that date was chosen, as well as clarification if banked emission credits could be utilized in the state offset program could be added.

Rick Sprott suggested that staff work with the presenter, Colleen Delaney, and use the available notes to develop an expanded narrative that accurately reflected the discussion to Marcelle's satisfaction. Staff has emailed Marcelle additional text minutes on August 9, 2005. Since this is Marcelle's last Board meeting, Marcelle will email to John Veranth and Rick Sprott indicating that this accurately reflects her recollection of the conversation. The minutes will be presented to the Board for final adoption at the next Board meeting.

- Ernest Wessman moved that the approval of the minutes be delayed until they can be revised. JoAnn Seghini seconded and the Board approved unanimously.

IV. Propose for Public Comment: R307-214-2, Incorporation by Reference, Various Subparts of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPS), MACT Standards. Presented by: Tim Andrus.

Mr. Andrus reviewed that EPA had promulgated two hazardous air pollutants standards, also known as MACT standards, since this rule was last updated.

Specifically, the standards for plywood and composite wood products and the standard for industrial, commercial and institutional boilers and process heaters have been issued.

The Division has committed to adopting all applicable MACT standards as they were promulgated. By adopting and receiving delegation for these standards, the State will have primacy for these rules. Staff recommends that these two MACT standards be proposed for incorporation by reference into the rules.

John Veranth pointed out that the citation on page 2 of the memo for #81 did not match the proposed rule [(89)] (91) on page 6. Upon verification, the proposed rule was correct and staff would confirm the citation before publication. Also, on page 2 of the memo, "(81) Subpart FFFF" should be changed to read "Subpart DDDD."

- Jerry Grover moved that the publication go out for public comment. Nan Bunker seconded and the Board approved unanimously.

IV. Propose for Public Comment: Amend R307-840, Lead-Based Paint Accreditation, Certification and Work Practice Standards. Presented by: Bob Ford.

Mr. Ford briefly explained the two proposals. The first proposal is an education rule which requires contractors who disturb paint as part of renovation projects that pre-date 1978 structures to inform owner and/or tenants of the possibility that lead-based paint is present. This alerts the owners and tenants of the potential of lead health effects in remodeling activities.

The second provides guidance to certified lead-based paint contractors, firms and accredited lead-based paint training providers on how to notify the division of regulated abatement projects or certification training courses. The purpose of this rule is to clarify the notification process.

On May 26, there was an outreach meeting and staff received no adverse comments for the proposed rules. Staff has also provided a copy to the EPA and the initial review finds that the changes are equally protective to human health and the environment.

- JoAnn Seghini moved that the Board propose for public comment the two proposed additions for R307-840. Wayne Samuelson seconded and the Board approved unanimously.

VI. Ethics Discussion and Disclosure Statement. Presented by: Fred Nelson.

Mr. Nelson, from the Attorney General's office, reviewed with the Board the State Ethics Act. The Legislature determined that even though Board members were not full-time employees of the state, the State Ethics Act would still apply to them. Many of the Board members represent specific interests and that at times presents issues of conflict of interest. There are general actions where rule making and policy decisions would apply across the state. It has been determined that there would not be a conflict of interest in that instance. If a particular entity or client that a Board member works with brings an item to the Board, the Board member is required to be recused and not participate in the decision. One primary purpose of the Ethics Act is disclosure. For the most part, if the Board member makes the disclosure on the appropriate forms and/or makes a disclosure in the meeting, the Board member can continue to participate in the meeting. There are certain prohibitions under the Ethics Act such as Board members are obligated not to disclose any kind of confidential information that is received. There are prohibitions in

accepting money for taking actions as a Board member. The completed Disclosure Statement should be notarized. It is requested that all members sign a current copy.

In addition, Mr. Veranth asked Mr. Nelson for an update on the Sierra Club's appeals of the Board's recent standing decisions. Mr. Nelson reported to the Board that the Sierra Club had filed petitions to review the decisions of the Board on the standing issue. Those appeals are now pending. The Sierra Club has also filed a motion to stay in the Sevier Power Company matter. The Sierra Club has also asked that the record be supplemented with some of the Division of Air Quality documents. As part of the Court of Appeals process, the Mediation Office selects cases where participants meet to possibly settle the case. This case was selected for mediation last week and after several hours the effort was unsuccessful. Copies of the pleadings on the supplementation of the record will be sent to the Board. The Sierra Club has asked the Court to consider as part of the record a number of documents that were filed with the permit application. They were not documents that the Board reviewed in making its decision. Mr. Nelson filed a response with the Court to advise the Court that the Board's decision was based on certain documents, and the additional documents were not part of the record at this point. If the parties wanted to bring the new documents to the Board and present them, the Board could review the decision. It is rare in the Appeals Court that they will allow supplementing the record, but the Sierra Club has made a request in that regard. As major events happen, Mr. Nelson will provide a memo in the Board packet and keep the Board advised.

VII. Informational Items.

- A. Compliance.** No questions.
- B. HAPS.** No Questions.
- C. Monitoring.** Presented by: Bob Dalley.

Mr. Dalley reviewed the graphs in the packet and noted high-wind and smoky days. There were fourteen days that exceeded the health standard in July. Mr. Dalley also briefed the Board on the Ozone Projections for 2005.

- D. Tune Out Smog.** Presented by: Rick Sprott.

Mr. Sprott informed the Board about the Choose Clear Air Vehicle Care Workshop would be held on September 10 at the Salt Lake Community Campus, Sandy Campus, and the Miller Automotive Training Center from 9:30-11 a.m. This will help individuals learn about some basics in vehicle maintenance.

Marcelle Shoop expressed her appreciation for being a Board member. She has taken another job and will no longer be able to participate.

Meeting adjourned at 2:05 p.m.

UTAH AIR QUALITY BOARD MEETING
July 6, 2005

MINUTES

I. Call to Order.

John Veranth called the meeting to order at 1:05 p.m.

Board members present:

Nan Bunker	Dianne Nielson	Marcelle Shoop
Jerry Grover	Wayne Samuelson	John Veranth
Jim Horrocks	JoAnn Seghini	Ernest Wessman

Acting for Executive Secretary: Cheryl Heying

II. Next Meeting.

August 3, 2005, and September 7, 2005.

III. Minutes.

There was one correction in the court reporter minutes located on page 48, line 22. The word "coal" in the phrase "coal technology mean," should be changed to "control."

- Jim Horrocks moved to approve the minutes, Nan Bunker seconded, and the Board approved unanimously.

IV. Election of Board Chair and Vice Chair.

- Jim Horrocks moved to nominate John Veranth as Board Chairman, and Wayne Samuelson seconded. Motion to close nominations by Nan Bunker and seconded by Wayne Samuelson. The Board approved the nomination unanimously.
- Jim Horrocks moved to nominate Ernest Wessman as Board Vice Chairman, and Wayne Samuelson seconded. Motion to close nominations by Nan Bunker and seconded by Marcelle Shoop. The Board approved the nomination unanimously.

Note: The agenda items were presented out of order, but for the minutes, they will be presented in order.

Board members asked questions about the diesel I/M Program, baseline dates, safety margin, and banked emissions. Mr. Reiss responded to all questions and the Board made no changes in the Plans. There was a correction in Section Part H, page 18, line 42, which should be amended from "R307-201-1 (7)," to read "R307-305-3 (4)."

- Jim Horrocks moved to approve the State Implementation Plan for subsection IX.A.10 for Salt Lake County, IX.A.11 for Utah County, and IX.A.12 for Ogden City. Ernie Wessman seconded and the Board approved unanimously.
- Jim Horrocks moved to approve R307-110-10 incorporating the PM₁₀ SIP section IX.A.1-9, Ernie Wessman seconded and the Board approved unanimously.
- Jim Horrocks moved to approve the State Implementation Plan IX.H, Emission Limits for Salt Lake County and Utah County with revision on page 18, line 42. It should be changed from: "R307-201-1 (7)" to "R307-305-3 (4)." Ernie Wessman seconded and the Board approved unanimously.
- Jim Horrocks moved to approve R307-100-17 to incorporate emission limits in IX.H. Ernie Wessman seconded and the Board approved unanimously.

VI. Propose For Final Adoption: Amend R307-101-2, R307-165, R307-201, R307-204, R307-205, R307-206, R307-302, R307-305, R307-309, and R307-310; New Rules R307-207 and R307-306. Presented by: Mat Carlile and Colleen Delaney.

Mr. Carlile stated that on March 9, 2005, the Board proposed for comment amendments to R307-101-2, R307-165, R307-201, R307-204, R307-205, R307-206, R307-302, R307-305, R307-309, and R307-310. In addition, the Board proposed new rules R307-207 and R307-306. These rules were proposed for comment for the following reasons: First, many of the requirements in the current rules apply only to PM₁₀ nonattainment areas. Also, amendments were needed to ensure that the requirements continue to apply in PM₁₀ maintenance areas. Next, the rules were clarified by removing outdated requirements, and by making the requirements easier to find and understand. Finally, amendments were also proposed to separate the rules into two categories, attainment area rules, and rules that apply only in nonattainment and maintenance areas. Three public hearings were held, and comments were received on the proposals. The summary of comments and DAQ responses are attached with the PM₁₀ maintenance plan.

During the March Board meeting, Dr. Dianne Neilson asked staff to check on diesel locomotive emissions limits above 6000 feet. After researching the issue and talking with the railroads and EPA, staff has added clarifying language that locomotives are exempt from emissions limits found in R307-201-3 (5) and R307-305-3 (3). Staff will continue to work with the railroad to reduce emissions.

Marcelle Shoop asked follow-up questions relating to locomotive emission exemption. Mr. Carlile responded to these questions.

The excess emissions provision in R307-305 was erroneously left out when there was a separation of the rules into two categories, attainment area rules, and rules that apply only in nonattainment and maintenance areas. Staff proposed to correct the error.

VIII. Scheduling of Discovery Matters for NEVCO Appeal and Determination of Role of Amici Curiae. Presented by: Fred Nelson.

Mr. Nelson reported that the parties had met and agreed upon a schedule to handle the hearing in this matter. The discovery process will occur up through the first part of October 2005. There will be a certain time frame to file motions. The Board will hear any motions in November 2005, and set a hearing date at that time. All parties will follow R307-103. Mr. Nelson discussed the role of the amicus parties that they would be allowed to submit briefs on any dispositive motions and pre-hearing and post-hearing briefs. They would also participate in oral arguments on those matters. The amicus parties will not be allowed to do discovery, but will be allowed to attend depositions.

Ernie Wessman recused himself from this item.

- JoAnn Seghini moved that the Board accept the schedule and description of the amicus status. Nan Bunker seconded and the Board approved unanimously.

IX. Propose For Final Adoption: R307-101-2, Update Definition of Volatile Organic Compounds. Presented by: Jan Miller.

Ms. Miller reported that the update went out for public comment and was followed by a public hearing. No one attended the hearing, and no comments were received. Staff recommends the proposal be adopted.

- Ernie Wessman moved to approve R307-101-2, Update Definition of Volatile Organic Compounds. Jerry Grover seconded and the Board approved unanimously.

X. Propose To Approve Five-Year Reviews and Continuation of Rules: Presented by Jan Miller.

- A. **R307-115, General Conformity.**
- B. **R307-320, Davis, Salt Lake and Utah Counties, and Ogden City: Employer-Based Trip Reduction Program.**

Ms. Miller reported to the Board that Title 40, Part 93, Subpart B, of the Code of Federal Regulations, requires that states set up procedures for federal agencies to follow to determine that projects do not interfere with SIP plans. Subpart B meets that requirement and has been approved by EPA. There have been no amendments to Subpart B and no need to change R307-115.

- Jim Horrocks moved to approve R307-115, General Conformity and Marcelle Shoop seconded and the Board approved unanimously.

Ms. Miller explained that rule R307-320 is part of the Ozone Maintenance Plan. The state statute allows the Board to apply the rule to federal, state and local government agencies, including school districts. It can also be applied to private business, but that has never been done. There are about 80 agencies that are affected by this rule. The Bureau of Reclamation has the lowest drive-alone rate at 35%. This program began in 1994 with UTA doing most of the promotional work. DAQ collects statistics once each year.

values in May and June. The highest ozone days occurred when there was smoke from fires in southern Utah and southern Nevada.

Meeting adjourned at 4:30 pm.

NESHAPS

MACT STANDARDS



State of Utah

Department of
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DIVISION OF AIR QUALITY
Richard W. Sprott
Director

ION M. HUNTSMAN, JR.
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DAQ-037-2005

MEMORANDUM

TO: Air Quality Board

THROUGH: Richard Sprott

FROM: Eileen Brennan

DATE: June 1, 2005

SUBJECT: Propose for Public Comment: R307-214-2, Incorporation by Reference, Various Subparts of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPS), MACT Standards.

The National Emission Standards for Hazardous Air Pollutants (NESHAPS) are federal rules that regulate hazardous air pollutants (HAPs) and implement Section 112 of the Clean Air Act (CAA). These standards are also commonly referred to as Maximum Achievable Control Technology (MACT) standards, and are located in 40 CFR Part 63.

The 1990 CAA amendments required the EPA to list source categories to be regulated by MACT standards and a schedule for promulgation of the standards. These source categories and schedules have been published, and 101 MACT standards have now been promulgated. Under R307-214-2, the Division has already adopted 92 of the MACTs in 40 CFR 63, and has chosen not to adopt seven of the MACTs. Two MACT standards that may apply to current or future Utah sources have been promulgated since the last incorporation.

The Division committed to adopting, implementing, and enforcing all applicable MACT standards in the Operating Permit Program submittal to EPA in April 1994. The Division demonstrated the resources necessary to carry out this commitment, and EPA approved the Operating Permit Program in part based upon this demonstration. As EPA promulgates new standards, the Division proposes the adoption of those standards that are potentially applicable to Utah sources.

By adopting and receiving delegation for the two current MACT standards, the State will have primacy over administration of these standards on Utah sources. This will be consistent with the

historical approach taken by the Department of Environmental Quality, and will simplify procedures required of sources.

Recommendation: The staff recommends that these two MACT standards be proposed for incorporation by reference into the Utah rules. The text of each individual MACT standard is voluminous and is not included in the Board packet. The proposed text for the modification to R307-214-2 is attached for your review.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products, published on July 30, 2004 at 69 FR 45943.

(81) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial and Institutional Boilers and Process Heaters, published on September 13, 2004 at 69 FR 55217.

Barbara Johnson - Correction to Eileen's memo

From: Timothy Andrus
To: Johnson, Barbara
Date: 8/3/2005 2:07 PM
Subject: Correction to Eileen's memo
CC: Carlile, Mat

Barbara, the memo that Eileen gave you on the MACT adoption is indeed in error. At the end of the memo, it lists the Boiler MACT as FFFF; it should be DDDD as shown in the proposed rule change. I don't have an electronic copy of the memo, so maybe you can make the correction if needed. Thanks.

R307. Environmental Quality, Air Quality.

R307-214. National Emission Standards for Hazardous Air Pollutants.

R307-214-1. Part 61 Sources.

The provisions of 40 Code of Federal Regulations (CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of October 20, 1994, are incorporated into these rules by reference. For source categories delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the Executive Secretary.

R307-214-2. Part 63 Sources.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, ~~2003~~2005, or later for those whose subsequent publication citation is included below, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- (7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
- (8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
- (9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
- (10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- (11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
- (12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
- (13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products, published on July 30, 2004 at 69 FR 45943.

~~[(56)](57)~~ 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline), ~~[, published on February 3, 2004 at 69 FR 5038.]~~

~~[(57)](58)~~ 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing, ~~[, published on November 10, 2003 at 68 FR 63052.]~~

~~[(58)](59)~~ 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

~~[(59)](60)~~ 40 CFR Part 63, Subpart HHHH - National Emission Standards for Wet-Formed Fiberglass Mat Production.

~~[(60)](61)~~ 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks, ~~[, published on April 26, 2004 at 69 FR 22602.]~~

~~[(61)](62)~~ 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

~~[(62)](63)~~ 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans, ~~[, published on November 13, 2003 at 68 FR 64432.]~~

~~[(63)](64)~~ 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products, ~~[, published on January 2, 2004 at 69 FR 130.]~~

~~[(64)](65)~~ 40 CFR Part 63, Subpart NNNN - National Emission Standards for Large Appliances Surface Coating Operations.

~~[(65)](66)~~ 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

~~[(66)](67)~~ 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products, ~~[, published on April 19, 2004 at 69 FR 20968.]~~

~~[(67)](68)~~ 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

~~[(68)](69)~~ 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

~~[(69)](70)~~ 40 CFR Part 63, Subpart SSSS - National Emission Standards for Metal Coil Surface Coating Operations.

~~[(70)](71)~~ 40 CFR Part 63, Subpart TTTT - National Emission Standards for Leather Tanning and Finishing Operations.

~~[(71)](72)~~ 40 CFR Part 63, Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing.

~~[(72)](73)~~ 40 CFR Part 63, Subpart VVVV - National Emission Standards for Boat Manufacturing.

~~[(+73+)]~~ (74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

~~[(+74+)]~~ (75) 40 CFR Part 63, Subpart XXXX - National Emission Standards for Tire Manufacturing.

~~[(+75+)]~~ (76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines. [~~published on March 5, 2004 at 69 FR 10512.~~]

~~[(+76+)]~~ (77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. [~~published on June 15, 2004 at 69 FR 33474.~~]

~~[(+77+)]~~ (78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants. [~~published on January 5, 2004 at 69 FR 394.~~]

~~[(+78+)]~~ (79) 40 CFR Part 63, Subpart BBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

~~[(+79+)]~~ (80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, published on September 13, 2004 at 69 FR 55217.

~~[(+80+)]~~ (82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries. [~~published on April 22, 2004 at 69 FR 21906.~~]

~~[(+81+)]~~ (83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

~~[(+82+)]~~ (84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation. [~~published on October 8, 2003 at 68 FR 58172.~~]

~~[(+83+)]~~ (85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing. [~~published on December 11, 2003 at 68 FR 69164.~~]

~~[(+84+)]~~ (86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants. [~~published on December 19, 2003 at 68 FR 70904.~~]

~~[(+85+)]~~ (87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

~~[(+86+)]~~ (88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

~~[(+87+)]~~ (89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

~~[(+88+)]~~ (90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

~~[(89)]~~ (91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

~~[(90)]~~ (92) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stand.

~~[(91)]~~ (93) 40 CFR Part 63, Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

~~[(92)]~~ (94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing. [~~published on October 30, 2003 at 68 FR 61868.~~]

~~[(93)]~~ (95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

~~[(94)]~~ (96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining. [~~published on October 10, 2003 at 68 FR 58615.~~]

KEY: air pollution, hazardous air pollutant, MACT

[~~October 7, 2004~~]2005

Notice of Continuation February 9, 2004

19-2-104(1)(a)

LEAD

BASED

PAINT



ION M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DAQ-045-2005

DIVISION OF AIR QUALITY
Richard W. Sprott
Director

MEMORANDUM

TO: Utah Air Quality Board

THROUGH: Richard W. Sprott, Executive Secretary

THROUGH: Bryce C. Bird, Air Standards Branch Manager

FROM: Robert W. Ford, Hazardous Air Pollutants Section Manager

DATE: June 21, 2005

SUBJECT: Propose for Public Comment: Amend R307-840, Lead-based Paint Accreditation, Certification and Work Practice Standards.

The Utah Air Quality Board originally incorporated 40 CFR Part 745, Subpart M by reference in R307-840, *Lead-Based Paint Accreditation, Certification and Work Practice Standards* on August 1998. In August 2003, the Board adopted three additional final rules and one correction to 40 CFR Part 745 that were previously promulgated by the U. S. Environmental Protection Agency (USEPA).

The purpose of this rulemaking is to incorporate by reference into R307-840 one addition and one modification to 40 CFR Part 745. The rule addition to be incorporated is 40 CFR Part 745 Subpart E entitled "Lead; Requirements for Hazard Education Before Renovation of Target Housing; Final Rule" which was originally published in the Federal Register on June 1, 1998 (63 FR 29907). This will allow the Utah Division of Air Quality Lead-Based Paint (LBP) Program to administer the Lead-Based Paint Pre-Renovation Education Rule in Utah instead of USEPA. The rule modification to be adopted is 40 CFR Part 745, Subpart L entitled "Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training; Final Rule" which was originally published in the Federal Register on April 8, 2004 (68 FR 18489). This modification provides additional procedural guidance to LBP Abatement Contractors and LBP Training Providers on notifying the Division of regulated LBP activities performed in Utah.

Recommendation: Staff recommends the Board propose for public comment the two proposed additions to R307-840. The proposed amendments to R307-840 and the material to be incorporated are attached.

Federal links: <http://www.epa.gov/lead/notification%20final.pdf> <http://www.epa.gov/lead/406b.pdf>

R307. Environmental Quality, Air Quality.**R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards.****R307-840-1. Purpose and Applicability.**

(1) Rule R307-840 establishes procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This rule also requires that, except as outlined in (2), all lead-based paint activities, as defined in this rule, must be performed by certified individuals and firms.

(2) R307-840 applies to all individuals and firms who are engaged in lead-based paint activities as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) Each department, agency, and instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of R307-840 regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(4) While Rule R307-840 establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in R307-840 requires that the owner or occupant undertake any particular lead-based paint activity.

R307-840-2. Definitions.

(1) Definitions found in 40 CFR 745.63, 40 CFR 745.83, and 40 CFR 745.223, in effect as of July 1, 2005 [April 10, 2003], are hereby adopted and incorporated by reference, with the substitutions found in (2) below and the modifications found in (3) below.

(2) Substitutions. [~~Substitute "Executive Secretary" for all references to "EPA," except in the definition of "Recognized laboratory" found in 40 CFR 745.223.~~]

(a) Substitute "the Executive Secretary" for all references to "EPA" except in the definition of "Pamphlet" found in 40 CFR 745.83 and in the definition of "Recognized laboratory" found in 40 CFR 745.223.

(b) Substitute "the Executive Secretary" for all references to "Administrator".

1 (3) Modifications. [~~Delete the definition of "Lead-based~~
2 ~~paint hazard" found in 40 CFR 745.223.~~]

3 (a) Delete the definition of "Administrator" found in 40 CFR
4 745.83.

5 (b) Modify the definition of "Pamphlet" found in Sec. 745.83
6 by deleting ", or any State or Tribal pamphlet approved by EPA
7 pursuant to 40 CFR 745.326 that is developed for the same
8 purpose".

9 (c) Delete the definition of "Lead-based paint hazard" found
10 in 40 CFR 745.223.

11 (d) Modify the definition of "Business day" found in Sec.
12 745.223 by including "and State of Utah" before "holidays".
13

14 **R307-840-3. Accreditation, Certification and Work Standards:**
15 **Target Housing and Child-Occupied Facilities.**

16 (1) The following requirements, in effect as of [~~April 10,~~
17 ~~2003~~] July 1, 2005, are adopted and incorporated by reference, with
18 the substitutions found in (2) below and the modifications found
19 in (3) below:

20 (a) 40 CFR 745.61, 745.65, 745.80, 745.81, 745.82, 745.85,
21 745.86, 745.88, 745.225(a) through (g) and (i), 745.226 (a)
22 through (h), 745.227, and 745.233.

23 (2) Substitutions.

24 (a) Substitute "the Executive Secretary" for all references
25 to "EPA" with the following exceptions:

26 (i) Sec. 745.65(d).

27 (ii) Sec. 745.86(b)(1).

28 [~~(iii)~~] (iii) Sec. 745.225(b)(1)(iii), Sec. 745.225(b)(1)(iv),
29 Sec. 745.225(c)(2)(ii), Sec. 745.225(c)(10), Sec.
30 745.225(e)(5)(iii), and Sec. 745.225(e)(5)(iv).

31 [~~(iv)~~] (iv) The last reference to EPA in Sec. 745.226[
32](a)(1)(ii) and the second reference to EPA in Sec. 745.226(d)(1).

33 [~~(v)~~] (v) The first three references to EPA in Sec.
34 745.227(a)(3), and the reference to EPA in Sec. 745.227(a)(4), [
35 the second reference to EPA in Sec. 745.227(e)(4);] Sec.
36 745.227(e)(4)(vi)(D), Sec. 745.227(e)(4)(vi)(I), and Sec.
37 745.227(f)(2).

38 [~~(vi)~~] (b) Substitute "the Executive Secretary or the
39 Executive Secretary's authorized representative" for references to
40 "EPA" in Sec. 745.225(c)(12), Sec. 745.225(f)(4), and Sec.
41 745.225(i)(1). [

42 (b) Substitute "the current Department of Environmental
43 Quality Fee Schedule" for all references to "Sec. 745.238."]

44 (c) Substitute "the Executive Secretary" for all references
45 to "Administrator".

46 (d) Substitute "R307-840" for "either Federal regulations
47 at Sec. 745.226 or a State or Tribal certification program
48 authorized pursuant to Sec. 745.324" in Sec. 745.82(b)(3).

49 (e) Substitute "R307-840" for "either Federal regulations
50 at Sec. 745.226 or an EPA-authorized State or Tribal
51 certification program" in Sec. 745.86(b)(1).

1 (f) Substitute "Sec. 745.82(b)(3)" for "Sec. 745.82(b)(iv)"
2 in 40 CFR 745.86(b)(1).

3 (g) Substitute sample certification language found in Sec.
4 745.88(b)(2)(ii) with that found in Sec. 745.88(b)(2)(i).

5 (h) Substitute sample certification language found in Sec.
6 745.88(b)(2)(i) with that found in Sec. 745.88(b)(2)(ii).

7 (i) Substitute "the current Department of Environmental
8 Quality Fee Schedule" for references to "Sec. 745.238" in Sec.
9 745.225(b)(4), Sec. 745.225(f)(3)(v), Sec. 745.226(a)(6), Sec.
10 745.226(e)(3), Sec. 745.226(f)(6), and Sec. 745.226(f)(7).

11 (j) Substitute "Utah Division of Air Quality electronic
12 notification system" for "Agency's central data exchange (CDX)"
13 in Sec. 745.225(c)(13)(vi), Sec. 745.225(c)(14)(iii), and Sec.
14 745.227(e)(4)(vii).

15 (k) Substitute "Notification Form" for "Schedule" in Sec.
16 745.225(c)(13)(vi).

17 (l) Substitute "Utah Division of Air Quality Lead-Based
18 Paint Program web site" for "NLIC at 1-800-424-LEAD(5323), or on
19 the Internet at <http://www.epa.gov/lead>" in Sec.
20 745.225(c)(13)(vi), Sec. 745.225(c)(14)(iii), and Sec.
21 745.227(e)(4)(vii).

22 (m) Substitute "Verification Form" for "Course Follow-up"
23 in Sec. 745.225(c)(14)(iii).

24 (n) Substitute "Utah lead-based paint firm" for "EPA" in
25 Sec. 745.227(e)(4)(vi)(D).

26 (o) Substitute "Utah lead-based paint individual" for "EPA"
27 in Sec. 745.227(e)(4)(vi)(I).

28 (p) Substitute "Lead-Based Paint Abatement Project
29 Notification" for "Notification of Lead-Based Paint Abatement
30 Activities" in Sec. 745.227(e)(4)(vii).

31 [+e+](q) Substitute "Sec 745.6[3]5(b)" for "Sec 745.227(b)"
32 in 40 CFR 745.227(h)(2)(i).

33 (3) Modifications.

34 (a) Change the date in Sec. 745.81 to October 1, 2005.

35 [+a+](b) Change the date in Sec. 745.226(a)(5), Sec.
36 745.226(d)(2), Sec. 745.226(f)(1), and Sec. 745.227(a)(1) to
37 August 30, 1999.

38 [+b+](c) Modify Sec. 745.225(b)(1)(iii) by deleting[~~the~~
39 ~~statement,~~] "or training materials approved by a State or Indian
40 Tribe that has been authorized by EPA under subpart Q of this
41 part,".

42 [+c+](d) Modify Sec. 745.225(b)(1)(iv) by deleting[~~the~~
43 ~~statement,~~] "or training materials approved by an authorized State
44 or Indian Tribe[~~]~~".

45 [+d+](e) Modify Sec. 745.225(c)(2)(ii) by including [~~the~~
46 ~~statement,~~] "Executive Secretary-accredited," before[~~the~~
47 ~~statement]~~ "EPA-accredited[~~]~~".

48 (f) Modify Sec. 745.225(c)(13)(v)(B) and Sec.
49 745.225(c)(14)(ii)(A) by deleting "EPA accreditation number,".

1 (g) Modify Sec. 745.225(c)(14)(ii)(F) to include "Utah
2 Division of Air Quality Lead-Based Paint Program training
3 verification statement".

4 [~~(e)~~](h) Modify Sec. 745.225(e)(5)(iii) by deleting
5 statement, "or training materials approved by a State or Indian
6 Tribe that has been authorized by EPA under [~~subsection~~]Sec.
7 745.324 to develop its refresher training course materials,".

8 [~~(f)~~](i) Modify Sec. 745.225 (e)(5)(iv) by deleting
9 statement, "or training materials approved by an authorized State
10 or Indian Tribe[~~;~~]".

11 [~~(g)~~](j) Modify Sec. 745.226 (a)(1)(ii) by including
12 statement, "EPA or" after the word "from[~~;~~]".

13 [~~(h)~~] Modify Sec. 745.227 (a)(3) by deleting the statement,
14 "Regulations, guidance, methods, or protocols issued by States and
15 Indian Tribes that have been authorized by EPA;".

16 [~~(i)~~](k) Modify Sec. 745.226(f)(7) by deleting
17 statement, "every 3 years[~~;~~]".

18 (l) Modify Sec. 745.227 (a)(3) by deleting "Regulations,
19 guidance, methods, or protocols issued by States and Indian
20 Tribes that have been authorized by EPA;".

21
22 **KEY: air pollution, paint, lead-based paint**

23 **[August 6, 2003]2005**

24 **Notice of Continuation May 5, 2003**

25 **19-2-104(1)(i)**
26
27

FEDERAL

REGISTER

ETHICS AND

DISCLOSURE

INFORMATIONAL ITEMS



Tune out smog

Well-maintained Vehicle
= Less Emissions
= Less Smog

Do you want to be proactive - but you aren't sure how? Are you hesitant to ask because you don't want to feel stupid - or be ripped off?

Let us teach you a few basics about vehicle maintenance. We'll have some great insider information on how to explain your concerns and ask for what you need, to know what to expect, and to develop an effective working relationship with a reputable technician. It will be 90 minutes well-spent.

Choose Clean Air

Vehicle care workshop

Saturday, September 10 from 9:30 to 11 a.m.
Salt Lake Community College, Sandy Campus
Miller Automotive Training Center
9750 South 300 West

For more ideas on what you can do to Choose Clean Air, visit our website: www.cleanair.utah.gov

There is no fee, but advance registration is encouraged to ensure space and materials.

Name: _____

Address: _____

City: _____ Zip: _____

Please mail completed form to:

DEQ - Vehicle Care Workshop
168 North 1950 West
Salt Lake City, Utah 84116

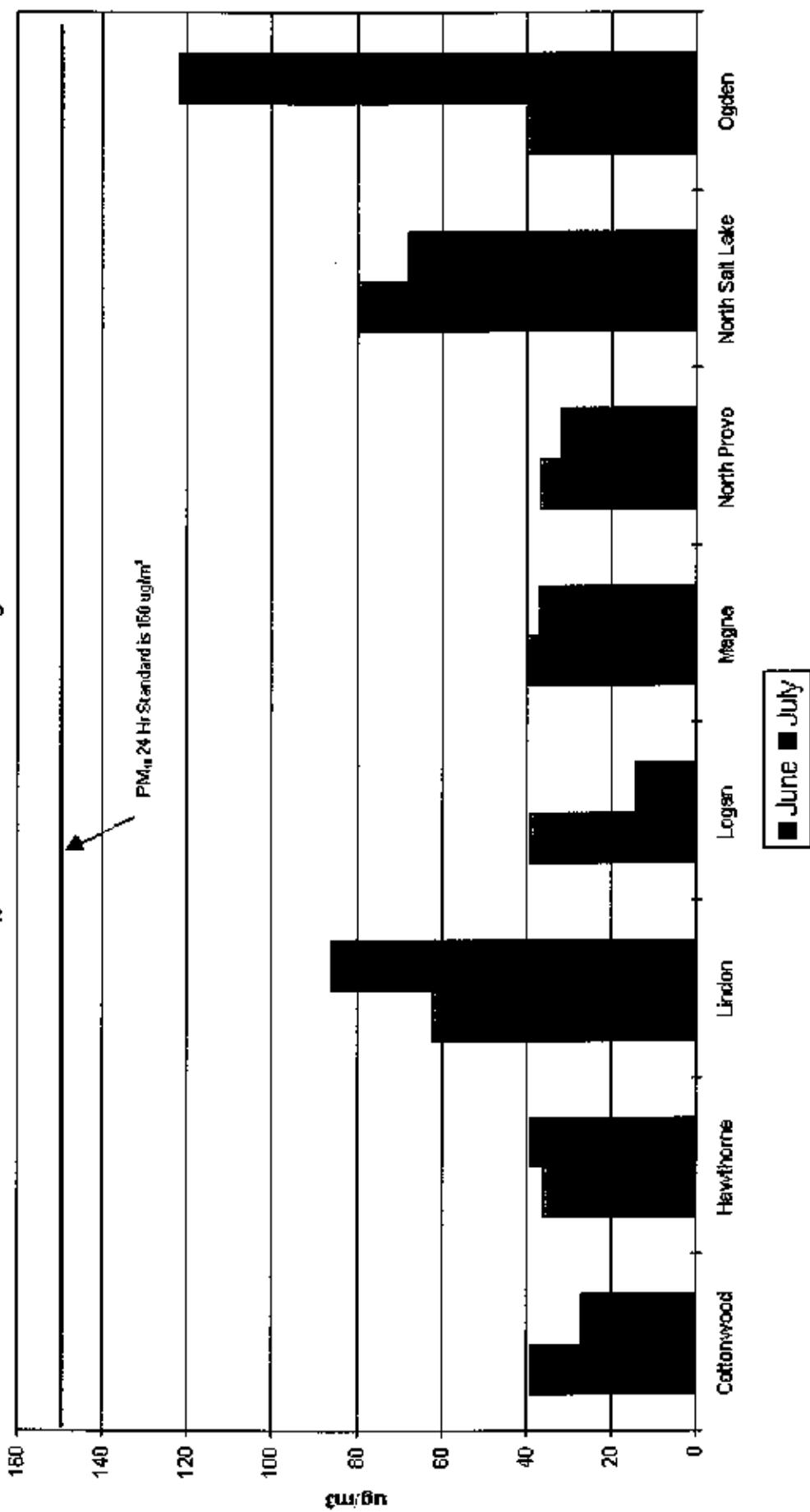
Or e-mail request to deqinfo@utah.gov Enter "Vehicle Care Workshop" on subject line.

Sponsored by the Utah Department of Environmental Quality, the Miller Automotive Training Center at Salt Lake Community College, Sandy Parks and Recreation, and Utah AAA.

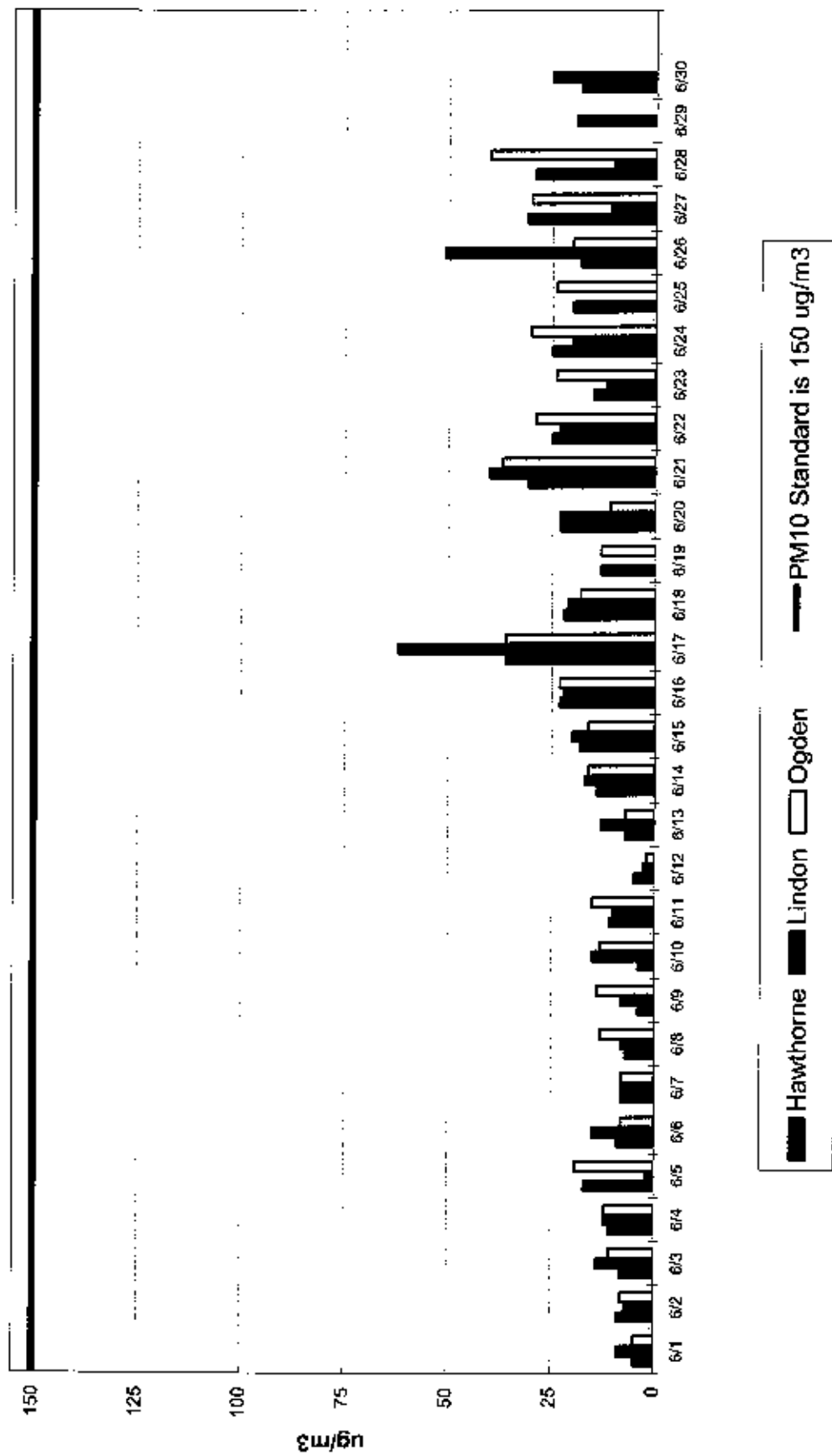
2 MEMOS

Highest PM₁₀ Concentration for June-July 2005

PM₁₀ 24 hour Standard is 150 ug/m³

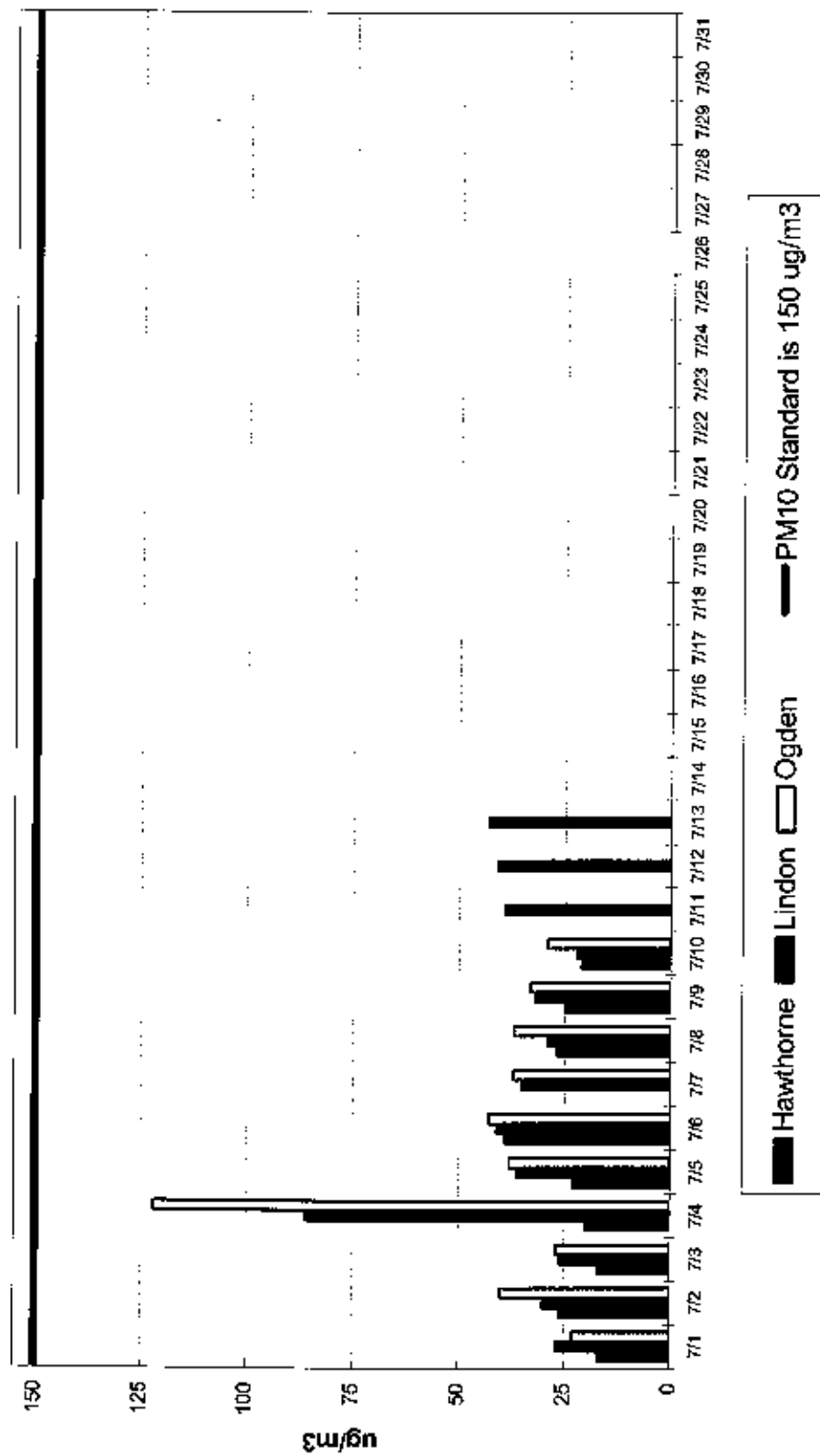


PM₁₀ Filter at Hawthorne, Lindon, & Ogden June 2005

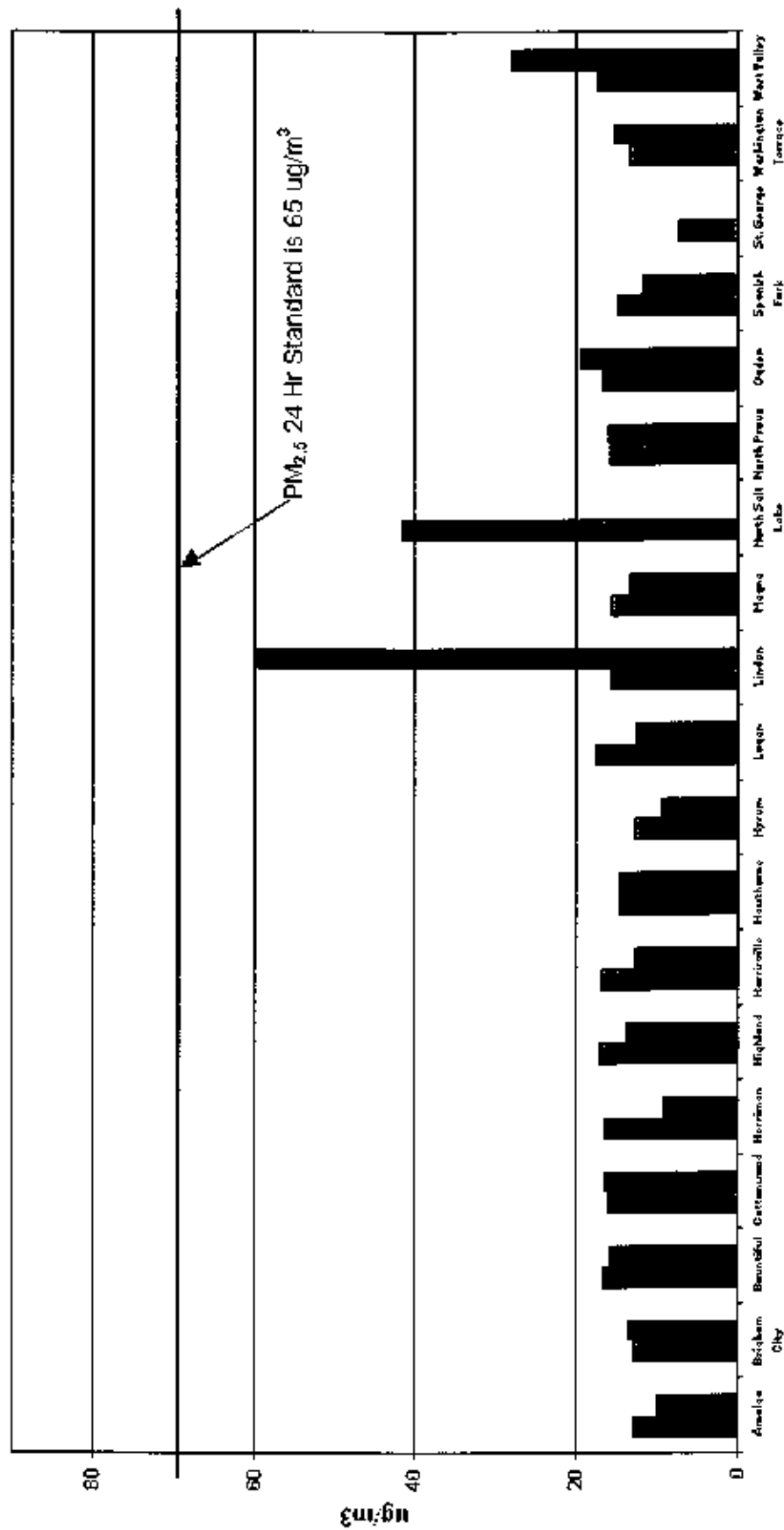


PM₁₀ Filter at Hawthorne, Lindon, & Ogden

July 2005



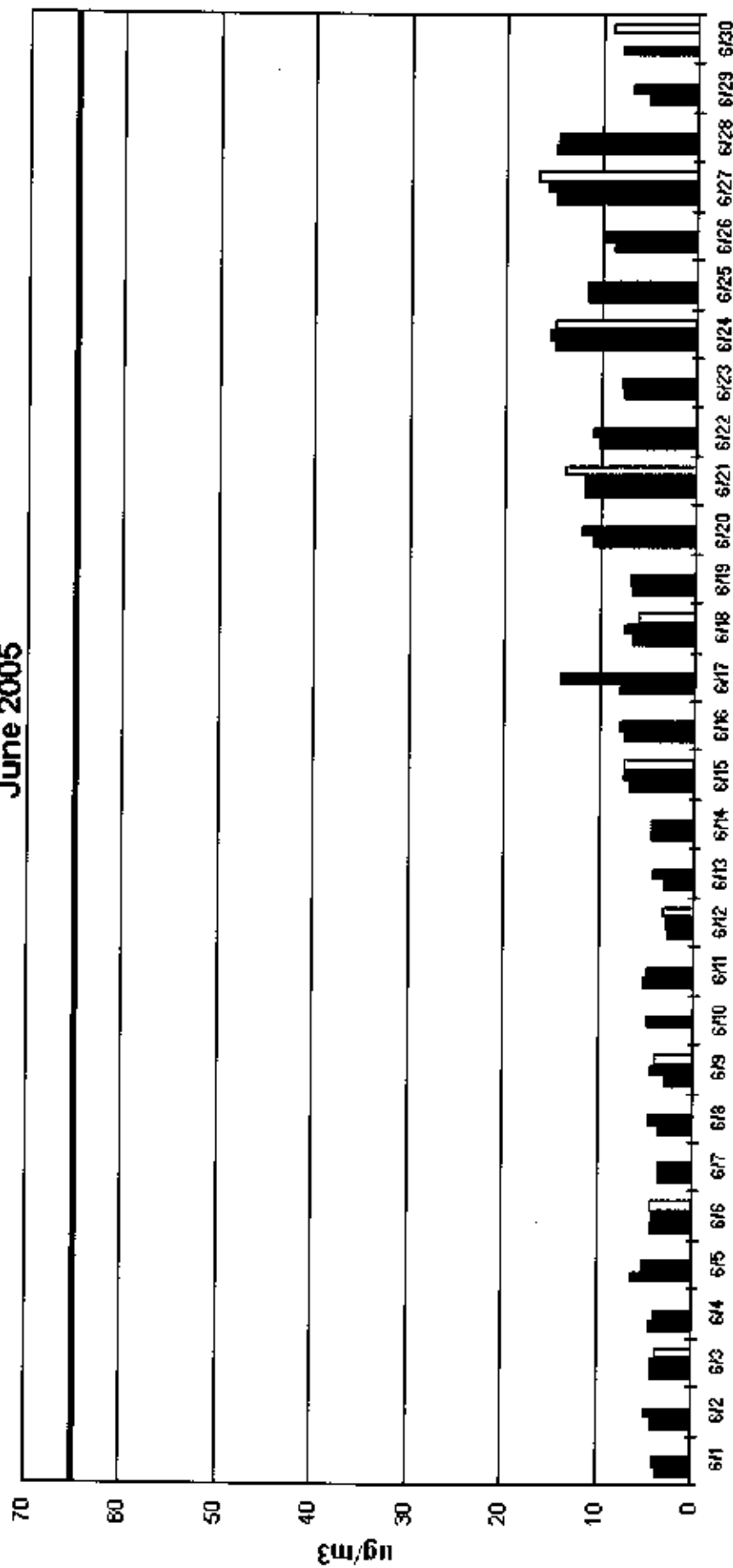
Highest PM_{2.5} Concentration for June~July 2005 PM_{2.5} 24 Hour Standard is 65 ug/m³



■ June ■ July

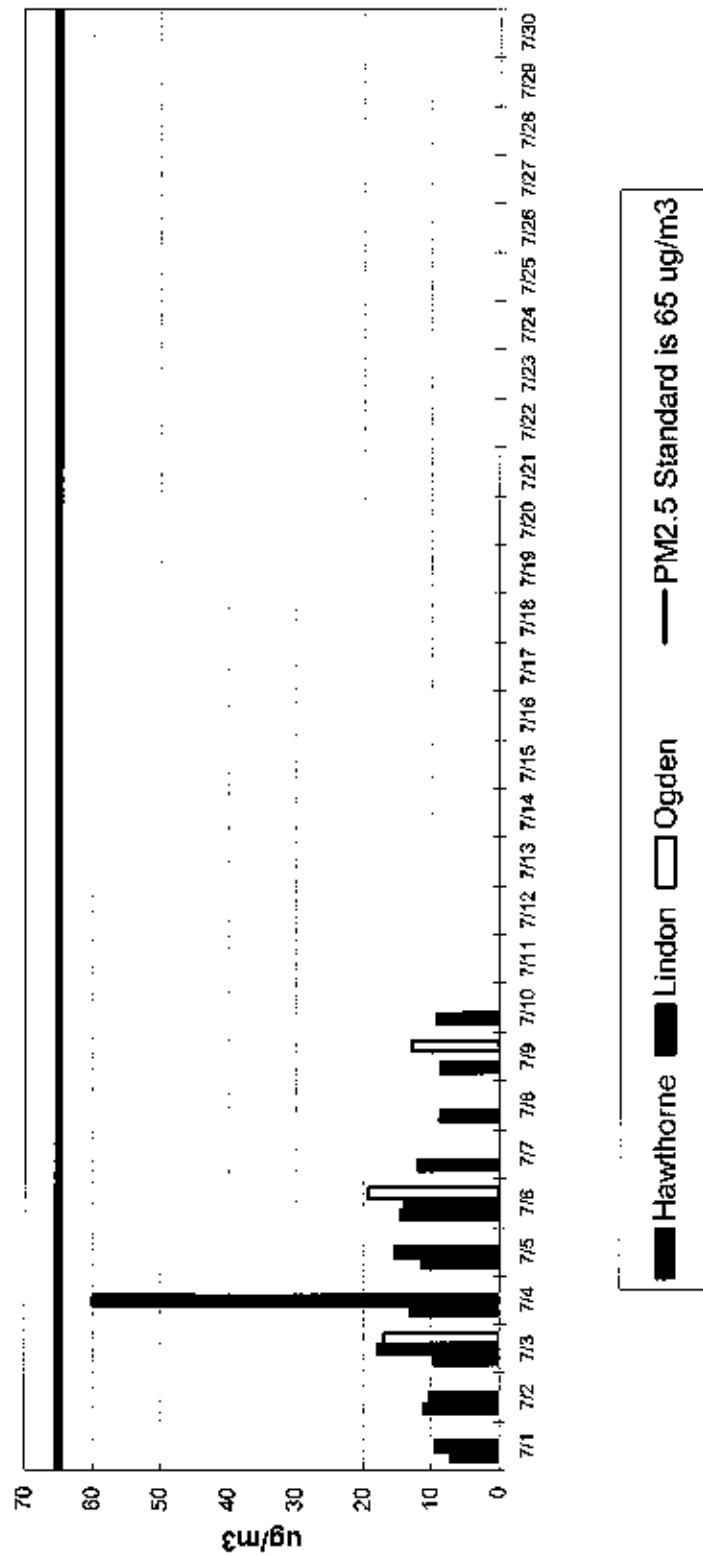
PM_{2.5} Filter at Hawthorne, Lindon, & Ogden

June 2005

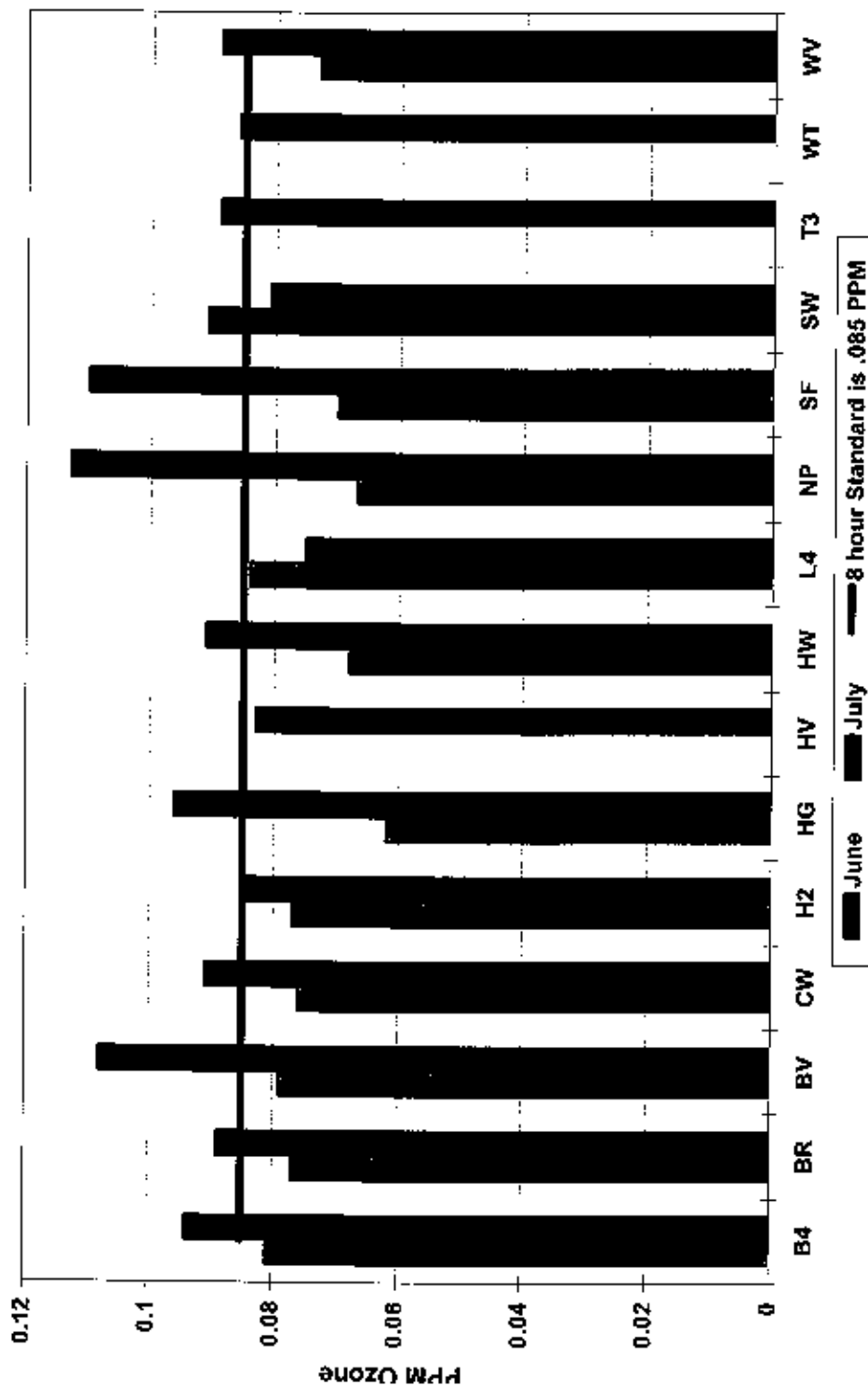


Hawthorne
 Lindon
 Ogden
 PM_{2.5} Standard is 65 $\mu\text{g}/\text{m}^3$

PM_{2.5} Filter at Hawthorne, Lindon, & Ogden July 2005



8 Hour Ozone Highest Daily Maximum Values June-July 2005



OZONE PROJECTIONS FOR 2005 (Preliminary data through July 31, 2005)

The 8-hour ozone standard is 0.08 parts per million. A violation is based on the three-year average of the 4th highest daily value for each year. A violation occurs at 0.085 since an average of .084 rounds to .08 and is not a violation.

2004 was a good year for ozone. We had relatively low temperatures and few forest fires. There were no exceedances of the 8-hour standard.

In 2003 we exceeded the health standard several times. There were also a number of days that data was flagged due to the contribution of natural forest fire smoke to high ozone values. If EPA concurs with the data, it is not included in the violation data set. EPA has not yet concurred with these flags, so the following table was calculated with the flagged days both included and excluded. The table shows that we would have to have a series of unusually high ozone days to push the values to the 3-year violation level, even if the flagged data in 2003 are included.

Monitor Site Name	Current 4 th High (3 yr averages)	Allowable 4 th Max. (flagged days not approved)	Allowable 4 th Max. (flagged days are approved)
Beach #4	.086	.103	.107
Brigham City	.079	.111	.113
Bountiful	.092	.109	.109
Cottonwood	.084	.098	.101
Herriman	.080	.105	.106
Highland	.080	.108	.110
Harrisville	**	.102	.103
Hawthorne	.083	.105	.106
Logan	.070	.122	.123
North Provo	.076	.108	.108
Spanish Fork	.081	.107	.108
St. George	.077	*	*
Washington Terrace	**	.106	.107
West Valley	.085	.106	.108

* St. George started in May 2004; not enough data to calculate a 2003 – 2005 average.

** Harrisville and Washington Terrace data pending calibration review.

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Bountiful	.092	.109	.109
Cottonwood	.084	.098	.101
Herriman	.080	.105	.106
Highland	.080	.108	.110
Harrisville	**	.102	.103
Hawthorne	.083	.105	.106
Logan	.070	.122	.123
North Provo	.076	.108	.108
Spanish Fork	.081	.107	.108
St. George	.077	*	*
Washington Terrace	**	.106	.107
West Valley	.085	.106	.108

* St. George started in May 2004; not enough data to calculate a 2003 - 2005 average.

** Harrisville and Washington Terrace data pending calibration review.

UTAH STATE DIVISION OF AIR QUALITY

47mm Partisol: PM10 Concentration Adjusted to Sea Level (24-hr average) in Micrograms per Cubic Meter

2005 June

Date	Cottonwood	Hawthorn	Lindon	Logan 4	Magna(W)	Moab	NProvo	NProvo-X	NSL	NSL-X	Ogden2
06/01		5	9	5					13		5
06/02		9	7						21		8
06/03	16	7	14	8	7		14	14	17	21	11
06/04		11	12						10		12
06/05		17	2						28		19
06/06	11	9	15	2	10		15		13		8
06/07		8	8						16		8
06/08		7	8						22		13
06/09	16	4	8	1	7		15	15	17	20	14
06/10		4	15						19		13
06/11		11	10						22		15
06/12	13	5	3		5		12		11		2
06/13		7	13						18		7
06/14		14	17						27		16
06/15	24	18	20	17	14		16		34	37	16
06/16		23	22						31		23
06/17		36	62						48		36
06/18	24	22	21	13	13		21		26		18
06/19		13							18		13
06/20		23	23						41		11
06/21	35	31	40	39	40		37		80	68	37
06/22		25	23						55		29
06/23		15	12						39		24
06/24	26	25	20	34	24		20		38		30
06/25		20							21		24
06/26		18	51						25		20
06/27	39	31	11	28	33		27	29	47	48	30
06/28		29	10						59		40
06/29			19						23		
06/30	20	18	25		14		14		36		

Arith Mean	22	16	18	16	17		19	19	29	39	18
Max 24-hr Avg	39	36	62	39	40		37	29	80	68	40
Std. Dev	9	9	13	14	12		8	8	16	20	10
Days of Data	10	29	28	9	10		10	3	30	5	28
Days >150											
Yearly Avg	25	24	23	25	19		19	19	34	38	23

UTAH STATE DIVISION OF AIR QUALITY

47mm Partisol: PM10 Concentration Adjusted to Sea Level (24-hr average) in Micrograms per Cubic Meter

2005 July

Date	Cottonwood	Hawthorn	Lindon	Logan 4	Magna(W)	Moab	NProvo	NProvo-X	NSL	NSL-X	Ogden2
07/01		13	27						46		23
07/02		25	30						34		40
07/03	27	17	26	14			22	22	20	19	27
07/04		20	86								122
07/05		23	36						68		38
07/06		39	41		37		32				43
07/07			35								37
07/08		27	29								37
07/09		25	32		30		24				33
07/10		21	22								29
07/11			39								
07/12			41								
07/13			43								
07/14											
07/15											
07/16											
07/17											
07/18											
07/19											
07/20											
07/21											
07/22											
07/23											
07/24											
07/25											
07/26											
07/27											
07/28											
07/29											
07/30											
07/31											

Arith Mean	27	24	37	14	34		26	22	42	19	43
Max 24-hr Avg	27	39	86	14	37		32	22	68	19	122
Std. Dev		7	16		4		5		20		29
Days of Data	1	9	13	1	2		3	1	4	1	10
Days >150											
Yearly Avg	25	24	23	25	19		19	19	34	38	23

UTAH STATE DIVISION OF AIR QUALITY

PM2.5 Actual Concentration (24-hr average) in Micrograms per Cubic Meter

2005 June

Date	AG	BR	BV	CM	HE	HC	HV	MM	HY	LA	X4	LN	LX	MG	N2	NP	O2	SF	SW	TX	WX	XX	VX
06/01								8.6		2.0	2.5	4.3			9.3								
06/02								4.3		3.2	3.3	4.8			9.6								
06/03	2.8	4.2	4.2	4.2	2.6	4.6	5.1	4.3	2.9	3.9	3.6	4.3	5.0	3.4	9.2	4.9	3.7	3.8		4.0	4.2	4.1	3.8
06/04								4.4		3.4	3.6	4.0			5.9								
06/05								6.4		4.1	4.8	5.3			17.5								
06/06	2.3	3.9	4.2		3.9	3.4	3.5	4.5	2.4	2.7	1.7	4.3		3.3	6.0	4.6	4.5	4.3		3.8			
06/07								3.5		2.9	1.9	2.6			4.9								
06/08								3.6		3.5	2.7	4.3			7.4								
06/09	3.0	3.6	3.4	6.8	3.0	4.4	2.8	3.8	2.2	3.8	3.0	4.4	4.1	4.4	5.7	4.9	4.0	4.0		3.8	4.3		2.2
06/10										3.5	3.6	4.9			7.1							1.8	
06/11								3.3		3.3	4.1	4.8			11.6								
06/12	2.3	2.6	2.8	3.2	2.6	2.8	2.5	2.8	2.1	2.0	2.5	3.9		2.6	5.5	2.7	3.1	3.3		2.7			
06/13								3.4		2.3	2.7	4.2			6.1							4.3	
06/14								4.3		4.3	4.8	4.3			10.7								
06/15	5.5	7.0	7.3	7.4	3.8	6.7	6.0	6.7	5.9	7.4	6.8	7.4	7.4		6.8	7.3	6.7		6.8	7.6	8.7	7.8	
06/16								7.3		8.7	6.1	7.9			13.2								
06/17								7.9		8.0	6.1	14.2			41.7								
06/18	3.5	3.5	5.5	3.7	5.7	5.6	5.6	6.5	3.6	8.8	5.7	7.4		2.3	10.9	6.2	5.8	6.8		4.8		5.4	
06/19								6.5		5.0	5.1	8.7			13.6								
06/20								10.8		10.3	10.0	10.0			13.5								
06/21	10.3	12.7	12.2	11.8	12.1	10.2	12.2	11.6	10.5	12.8	12.4	11.5	12.8	5.8	19.7	11.2	13.6	9.6		11.0	10.8	12.4	11.6
06/22								10.2		8.0		10.7			14.0								
06/23								7.5		8.1	13.7	7.9			10.8								
06/24	13.0	13.6		11.6	11.4	11.1	17.0	14.8	12.7	15.4	17.0	15.3		12.0	18.8	11.0	14.7	10.4		13.3		11.2	
06/25								11.3		12.7	19.0	11.3			15.2								
06/26								8.7		9.9	11.3	9.7			12.8								
06/27	10.0	12.8	16.6	16.0	18.5	17.2	13.9	14.7	11.8	12.5	12.9	15.6	15.3	18.3	19.4	15.9	16.6	15.0		13.8	17.3	16.8	
06/28								14.8		11.2	9.7	14.6											
06/29								5.0		3.7	3.5	6.7											
06/30	4.1	4.9	5.4	7.8	5.1	6.4	4.1	7.9		3.8	4.6	6.8		7.7		7.0	8.8	6.5		4.6		5.7	

Arith Mean	5.7	6.7	6.8	7.4	6.9	7.2	7.3	7.1	6.0	6.6	6.6	7.5	9.0	6.3	12.3	7.5	8.2	7.1		6.1	8.1	8.1	8.5
Max 24-hr Avg	13.0	13.0	16.6	16.0	18.5	17.2	17.0	14.8	12.7	17.7	19.0	15.6	15.5	15.5	41.7	15.9	16.6	15.0		11.3	13.8	17.3	16.8
Std Dev	3.9	4.4	4.6	4.7	5.3	4.4	5.2	3.7	4.4	4.2	4.7	3.9	5.0	4.6	7.5	4.0	5.0	3.7		3.6	4.2	4.9	5.9
Days Data	10	10	9	10	10	10	10	29	9	30	29	30	5	9	26	10	10	10		9	5	9	5
Yearly Mean	15.0	9.0	11.0	12.2	8.7	8.7	9.8	12.5	11.9	15.2	14.6	10.6	10.4	10.2	13.9	10.7	11.7	8.6	6.8	9.9	10.2	12.6	11.0

UTAH STATE DIVISION OF AIR QUALITY

PM2.5 Actual Concentration (24-hr average) in Micrograms per Cubic Meter

2005 July

Date	AG	BR	BV	CO	HE	OG	HV	LM	HY	LA	X4	EN	LX	MG	N2	NP	O2	SF	SW	TX	WX	YX
07/01								7.1		5.3	7.1	9.5										
07/02								11.8		8.2	9.5	10.2										
07/03	6.9	8.8	9.6	10.2	7.9	9.8	9.5	8.6		18.4	10.6	17.9	15.7	8.6		12.3	17.0	7.3		14.0	14.3	29.0
07/04								12.2		12.4	12.2	60.0										
07/05								11.4				15.5										
07/06	10.0	13.5	15.9			13.8	12.7	14.6	9.4			14.0		13.3		16.0	19.4	11.7		15.3		16.3
07/07						11.2		12.0												1.8		
07/08								8.3														
07/09	8.9	10.9			9.2	11.3	10.8	8.8	9.0					9.5		11.2	13.0	9.5		10.6	9.0	31.6
07/10								9.3														
07/11																						
07/12							7.1														8.3	
07/13																						
07/14																						
07/15																						
07/16																						
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07/27																						
07/28																						
07/29																						
07/30																						
07/31																						

Arith Mean	8.6	10.6	12.7	10.2	8.6	11.4	10.1	10.6	9.2	9.3	9.9	21.2	15.7	10.5		13.2	16.5	9.5		13.3	11.6	16.3	19.1
Max 24-hr Avg	10.0	13.5	15.9	16.4	9.2	13.8	12.7	14.6	9.4	12.4	12.2	60.0	15.7	13.3		16.0	19.4	11.7		15.3	14.3	29.0	29.0
Std Dev	1.6	3.4	4.4	3.2	0.9	2.4	2.4	2.3	0.3	3.0	2.1	19.3		2.5		2.5	3.2	2.2		2.4	3.7	4.3	14.1
Days Data	3	3	2	1	2	3	4	10	2	4	4	6	1	3		3	3	3		3	2	4	2
Yearly Mean	14.7	9.0	11.0	10.2	8.7	8.6	9.8	12.4	11.8	15.1	14.5	10.9	10.6	10.2	13.9	10.8	11.8	8.6	6.6	10.6	10.3	12.7	11.4



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF AIR QUALITY
Richard W. Sprott
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

DAQC-1089-2005

MEMORANDUM

TO: Air Quality Board
FROM: Richard W. Sprott, Executive Secretary
DATE: July 12, 2005
SUBJECT: Compliance Activities – June 2005

Annual Inspections Conducted:

A.....7
SM.....16
B.....19

Initial Compliance Inspections Conducted:

A.....0
SM.....1
B.....1

On-Site stack test audits conducted:.....1

Stack test report reviews:6

On-site CEM audits conducted:0

Emission reports reviewed:0

Oxy fuels inspections conducted:.....0

¹Miscellaneous inspections conducted.....32

Complaints received:	22
VOC inspections:	
Tankers	0
Degreasers	0
Paint Booths	6
Source Compliance Action Notice issued	2
Notices of Violation issued	1
Compliance Advisories issued	5
Settlement Agreements resolved	2
Penalties Collected	\$8,000.00
Notices of Violations issued:	
A-Live Foods Inc.	
Compliance Advisories issued:	
Thermo Fluids, Inc.	
Dal Solgio, Inc.	
Western Quality Concrete	
Great Salt Lake Mineral Corp.	
Castlewood Builders L.L.C.	
Settlement Agreements Reached:	
Metro Waste, L.L.C.	\$1,600.00
Harper Contracting	\$6,400.00

¹Miscellaneous inspections include, e.g., surveillance, level 1 inspections, complaints, on-site training, tanker vapor certifications, dust patrol, smoke patrol, open burning, etc.



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MEMORANDUM

TO: Utah Air Quality Board DAQH-0538-05

FROM: Richard W. Sprott, Executive Secretary

DATE: July 11, 2005

SUBJECT: Hazardous Air Pollutant Section Compliance Activities – June 2005

6/05

Asbestos Demolition/Renovation Inspections	11
Asbestos in School Inspections	12
MACT Compliance Inspections	4
Other NESHAP Inspections	0
State Rules (Only) Inspections	0
Asbestos Notifications Accepted	118
Asbestos Phone Calls Answered	476
Asbestos Individuals Certifications: Approved/Disapproved	89/0
Company Certifications/Re-certifications	2/1
Alternate Asbestos Work Practices: Approved/Disapproved	4/0
 Lead Based Paint (LBP) Inspections	 4
LBP Notifications Approved	1

LBP Phone Calls Answered	57
LBP Letters prepared and mailed	44
LBP Courses Reviewed/Approved	0/0
LBP Course Audits	0
LBP Certifications Approved/Disapproved	5/0
LBP Company Certifications	0
Notices of Violation Issued	0
Notices of Noncompliance (NON)	0
Compliance Advisories Issued	4
CAMDS	
Environmental Health Services	
Rocky Mountain Environmental Consultants	
House Movers, Inc.	
SCANS (warning letters) Issued	4
Settlement Agreements Finalized	0
Penalties Agree to	0

Monday
June 1, 1998

Part XV

Environmental Protection Agency

40 CFR Part 745

Lead; Requirements for Hazard Education
Before Renovation of Target Housing;
Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62131; FRL-5751-7]

RIN 2070-AC65

Lead; Requirements for Hazard Education Before Renovation of Target Housing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule requires certain persons who perform renovations of target housing (as defined under 40 CFR 745.103) for compensation to provide a lead hazard information pamphlet to owners and occupants of such housing prior to commencing the renovation, as stipulated by section 406(b) of the Toxic Substances Control Act. In addition, this rule requires notification on the nature of the renovation activities in certain circumstances involving multi-family housing. This rule ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing. In addition to providing general information on the health hazards associated with exposure to lead, the lead hazard information pamphlet advises owners and occupants to take appropriate precautions to avoid exposure to lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations. The Agency believes that the distribution of the pamphlet will help to reduce the exposures which cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead. This rule was proposed in the *Federal Register* of March 9, 1994.

DATES: The requirements in this final rule shall take effect on June 1, 1999. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight Savings Time on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the final rule (or other documents mentioned as available in this rule), contact the National Lead Information Clearinghouse at 1-800-424-LEAD. For technical information contact: Dayton Eckerson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: 202-

260-1591, e-mail: eckerson.dayton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Potentially regulated entities under this rule are any person(s) who perform renovations of target housing for compensation. Target housing is defined (see 40 CFR 745.103) as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling pursuant to 40 CFR 745.103. Regulated categories and entities include:

Category	Examples of Regulated Entities
Renovators	<ul style="list-style-type: none"> General Building Contractors/Operative Builders (Renovation firms, individual Contractors, etc.) Special Trade Contractors (Carpenters, Painters, Drywall workers and lathers, "Home Improvement" Contractors, etc.)
Multi-family Housing	Property Management Firms
Owners/Managers	Some Landlords

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the applicability provisions in § 745.82 of the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. Authority

This final rule is issued under the authority of section 406(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2686(b). In 1992, TSCA was amended by section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 to add Title IV, entitled Lead Exposure Reduction. The Residential Lead-Based Paint Hazard Reduction Act is also referred to as Title X of the Housing and Community Development Act of 1992, Pub. L. 102-550.

III. Background

A. Legislative and Statutory Background

Congress passed Title X to address the need to control exposure to lead-based paint hazards. Title X establishes the infrastructure and standards necessary to reduce lead-based paint hazards in housing. Congress recognized that lead poisoning is a particular threat to children under age 6, and emphasized the needs of this vulnerable population within the various sections of Title X. Section 1021 of Title X amends TSCA (15 U.S.C. 2601, et seq.) by adding a Title IV, entitled "Lead Exposure Reduction."

This rule is issued under the authority of section 406(b) of Title IV of TSCA, and is intended to provide information to owners and occupants of target housing that will allow these individuals to avoid exposure to lead-contaminated dust and lead-based paint debris which are sometimes generated during renovations of housing with lead-based paint. Since children under the age of 6 are especially susceptible to the hazards of lead, those owners and occupants with children can take action to protect their children from lead poisonings. Section 406(b) requires EPA to promulgate regulations requiring certain persons who perform renovations of target housing for compensation to provide a lead hazard information pamphlet (developed under section 406(a) of TSCA) to the owner and occupant of such housing prior to commencing the renovation. Target housing is defined in section 401(17) of TSCA, 15 U.S.C. 2681. Those who fail to provide the pamphlet as required may be subject to both civil and criminal sanctions under section 16 of TSCA.

This regulation represents one piece of a broad range of interrelated lead exposure reduction activities mandated under Title X. Many of these activities supported and affected the development of the section 406(b) regulations. Below is a discussion of several related provisions of Title X which provide the context for many of the decisions made during the development of this rule.

The provision most closely tied to section 406(b) is section 406(a) of TSCA. Section 406(a) directs EPA to develop and publish, after notice and comment, an information pamphlet on lead and the hazards of exposure to lead-based paint in the home. The Consumer Product Safety Commission (CPSC) joined EPA in co-sponsoring the pamphlet's development in consultation with the Department of Housing and Urban Development (HUD) and the Centers for Disease Control and

Prevention (CDC). EPA issued a draft of the pamphlet for public review on March 9, 1994 (59 FR 11119) (FRL-4642-7). After addressing comments received from the public and other Federal Agencies, EPA announced the final pamphlet's availability in the **Federal Register** of August 1, 1995 (60 FR 39167) (FRL-4966-6).

In addition to outlining the health effects and symptoms of lead exposure, section 406(a) requires that this pamphlet: Contain information on the potential hazards of renovating dwellings containing lead-based paint; recommend that an inspection or risk assessment for lead-based paint be performed before beginning renovations in target housing; suggest precautionary measures for protecting occupants during renovations in homes containing lead-based paint; and identify Federal, State, and local sources of information on lead and lead-based paint.

Two sections of Title X also require the dissemination of the lead hazard information pamphlet developed pursuant to section 406(a) of TSCA. First, section 1018 of Title X requires EPA and HUD to promulgate joint regulations for disclosure of certain information concerning lead-based paint and lead-based paint hazards by persons offering to sell or lease target housing. The section 1018 regulations include the requirement that the sellers and lessors provide the lead hazard information pamphlet to prospective purchasers or lessees. EPA and HUD issued the final regulations implementing section 1018 in the **Federal Register** of March 6, 1996 (61 FR 9064) (FRL-5347-9).

Second, section 1012 amends section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) to require that the lead hazard information pamphlet be provided to purchasers and tenants of housing receiving assistance under a program administered by the Secretary of HUD, or otherwise receiving more than \$5,000 in project-based assistance under a Federal housing program. HUD issued the proposed section 1012 rule on June 7, 1996 (61 FR 29170) (FRL-3482-P-01).

Under section 403 of TSCA, EPA is charged with refining the general definitions of "lead-based paint hazards," "lead-contaminated dust," and "lead-contaminated soil" which are listed in section 401 of TSCA. On September 11, 1995 (60 FR 47248) (FRL-4969-6), EPA issued an interim guidance document for risk assessors and managers to aid in the identification and prioritization for control of lead hazards until the final section 403 definitions are issued. EPA is currently

in the process of developing the section 403 definitions.

EPA has developed this rule to function independently of the lead hazard definitions to be developed under section 403. Under this final rule, EPA has eliminated the linkage of the definition of "renovation" to whether or not lead-based paint hazards are expected to occur as a result of the renovation activity. Instead, the definition of "renovation" has been simplified to focus on activities that disturb painted surfaces in target housing. It is discussed further in Unit V.D. of this preamble. Therefore, this rule under section 406(b) would require renovators to perform pre-renovation notification for all renovation activities performed for compensation in target housing, unless specifically exempted by § 745.82 of the regulatory text.

Section 402(a) of TSCA directs EPA (in consultation with HUD, the Department of Labor, and the Department of Health and Human Services (HHS)) to promulgate regulations on accreditation of training programs and the certification of individuals and contractors engaging in lead-based paint activities. Section 402(a) also requires that EPA, in consultation with the aforementioned agencies, develop standards for the performance of lead-based paint activities (including lead inspections and risk assessments). EPA issued the proposed section 402 rule on September 2, 1994 (59 FR 45872) (FRL-4633-9), and the final rule on August 29, 1996 (61 FR 45778) (FRL-5389-9).

Section 402(c)(1) of TSCA directs EPA to issue guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead when performed in target housing, public buildings constructed before 1978, and commercial buildings. EPA released its final guidelines for renovation and remodeling, entitled *Reducing Lead Hazards When Remodeling Your Home in April 1994* (revised in September 1997), and has made the guidelines available through the National Lead Information Clearinghouse (NLIC).

Section 402(c)(2) of TSCA directs EPA to conduct a study of the lead hazards generated during different types of renovation and remodeling activities. Section 402(c)(3) of TSCA directs EPA to use the results of the renovation study, along with other information, to determine which renovation and remodeling activities should be regulated as lead-based paint activities, based on potential hazards generated during their performance.

Section 404 of TSCA directs EPA to develop an application process for those States (which EPA has interpreted to include Tribes) that seek to administer and enforce the standards, regulations, and requirements established under sections 402 and 406. Section 404 also directs EPA to develop and issue a Model State Program for use by States and Tribes pursuing authorization under these provisions. EPA proposed the authorization process and the Model State Program for States and Tribes, in conjunction with the proposed rule for section 402, in the September 2, 1994 **Federal Register**. The section 404 rule was also published on August 29, 1996, in final form.

Pursuant to section 1015 of Title X, HUD established a Task Force on Lead-Based Paint Hazard Reduction and Financing made up of private and public organizations. The Task Force, representing the spectrum of interests affected by the lead-based paint issue, released final recommendations on evaluating and reducing lead-based paint hazards in private housing on July 11, 1995, in a report entitled *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing* (Copies of this report can be acquired by contacting the NLIC at 1-800-424-LEAD). These recommendations have been considered in the development of this final rule.

Pursuant to section 1017 of Title X, HUD, in cooperation with EPA and other Federal agencies, has revised its guidelines for lead-based paint hazard evaluation and reduction activities. The revised document, entitled *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, was released to the public in June 1995. A copy of the guidelines is included in the public record for this rule.

B. Lead Poisoning in the United States

Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure can be especially damaging to children, fetuses, and women of childbearing age. As recent studies have identified previously unrecognized effects, there has been increasing concern about blood-lead levels once thought to be safe. Since 1978, CDC has lowered the blood-lead level of concern from 60 µg/dL (micrograms/deciliter) to 10 µg/dL (Ref. 2).

Lead poisoning has been called "the silent disease" because its effects may occur gradually and imperceptibly, often showing no obvious symptoms. Chronic blood-lead levels as low as 10 µg/dL have been associated with learning disabilities, growth

impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system. In large doses, lead exposure can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also alter fetal development and cause miscarriages.

In 1991, the Secretary of HHS characterized lead poisoning as the "number one environmental threat to the health of children in the United States" (Ref. 2). The percentage of children under 6 years of age with elevated blood-lead levels has declined over the last 20 years. Recent results from the Third National Health and Nutrition Examination Survey (NHANES III, Phase 2) indicate that the average child's blood-lead level has declined from 12.8 µg/dL to 2.7 µg/dL (Ref. 9a). However, about 800,000 children under the age of 6 (4.2% of children at that age) still had blood-lead levels above CDC's 10 µg/dL level of concern (Refs. 9 and 9b).

C. Hazards From Past Uses of Lead-Based Paint

Efforts to reduce exposure to lead from sources like gasoline and food cans have played a large role in the past reductions of blood-lead levels in the United States. Despite these successes, a significant human health hazard remains due to improperly managed lead-based paint. From the turn of the century through the 1940's, paint manufacturers used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 1960's, as largely lead-free latex paints became more popular. Although CPSC banned lead-based paints from residential use in 1978 (currently, paints may not have greater than 0.06% lead by weight (Ref. 3)), EPA and HUD estimate that 83% of the privately-owned housing units built in the United States before 1980 contain some lead-based paint. By these estimations, approximately 64 million homes contain lead-based paint which may pose a hazard to the occupants (Ref. 4).

Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create an imperceptible film over surfaces in a house. In some cases, cleaning and renovation activities can increase the threat of lead-based paint exposure by dispersing fine lead dust particles into the air and over accessible household surfaces. If dust is managed improperly, both adults and children

could receive hazardous exposures to lead by inhaling the fine dust or by ingesting paint dust during hand-to-mouth activities. Children under age 6 are especially susceptible to lead poisoning (Ref. 2).

IV. Summary of Proposed Rule and Public Comments

On March 9, 1994 (59 FR 11108), EPA issued proposed regulations that would require renovators to provide a lead hazard information pamphlet to owners and occupants of target housing before beginning renovations, and notification on the nature of the renovation activities in certain circumstances involving multi-family housing. The housing that EPA proposed to cover by the regulation included all housing built before 1978 with the exception of 0-bedroom dwellings and housing for the elderly and persons with disabilities wherein no child under 6 years of age resides or is expected to reside. EPA's proposal provided flexibility for renovations conducted in common areas (like stairways, lobbies, and hallways) of buildings. EPA requested comments concerning the proposed rule, specifically on the definition of "renovation" and identifying renovation activities that should be covered under the rule.

By the close of the comment period, May 9, 1994, EPA had received 30 comments. The largest number of responses was received from public health and environmental protection departments (27% of the responses) and organizations involved with building and development (27% of the responses). Other commenters included representatives from advocacy groups (23% of the responses) and the real estate industry (10% of the responses). Approximately 10% of the responses came from a combination of Federal agencies, State agencies, and concerned private citizens. A summary of all comments received, and EPA's responses, may be found in the Response to Comments document which is available for public review in the TSCA Docket for this rulemaking (see Unit VIII. of this preamble). The paragraphs that follow briefly describe some of the key concerns that were raised by the commenters.

The majority of the comments received concerned the term "renovation." Commenters requested clarification so as to differentiate between work that would be considered renovation and that categorized as repair and maintenance. Concerns were expressed regarding flexibility in addressing emergency situations where the need for a rapid response conflicted

with the ability to provide the pamphlet to the owner and occupant of the target housing to be renovated. Over half of the comments concerning renovation specifically addressed the proposed alternative approaches for defining renovations: modeling the definition after the asbestos program, listing specific activities of concern, using the Occupational Safety and Health Administration (OSHA) list of construction activities, identifying specific job classifications, identifying specific cost ranges, or specifying the size of the home improvement activity.

Numerous comments concerned other definitions in the proposed rule such as "person," "lead-based paint hazard," and "target housing." Commenters also addressed the proposed rule's applicability to multi-family housing, the actual mechanisms for pamphlet distribution, and the corresponding acknowledgment requirement. A few comments concerned the burden of the rule on the regulated industry, the overall scope of the rule, and its projected cost.

EPA received no comments on the section of the rule establishing a procedure for the submission of confidential business information.

V. Final Rule Provisions

In light of the public's comments, the Agency has striven to ensure that this rule is clear, understandable, flexible, achieves the statutory objective while imposing the minimum burden, and is consistent with other Federal activities. These goals are important to assure quick and widespread implementation of and compliance with the rule.

A. Scope and Purpose

The scope, purpose, and applicability sections of the rule have been modified to more clearly reflect who is responsible for providing lead hazard information, who is to receive this information, the nature of that information, and the rule's authority.

B. Date of the Rule

EPA received a comment suggesting that the effective date of the rule be immediate. However, EPA believes that the rule's effective implementation requires an informed and prepared general public and regulated community. EPA has concluded that a phase-in period of 1 year is necessary to provide adequate time for parties to become familiar with the rule requirements and to set up procedures for compliance.

C. Applicability

EPA requested comments on six approaches being considered for describing the activities encompassed by the term "renovation." Most of the numerous comments received on this topic requested further clarification and additional guidance in determining which types of home improvement, maintenance, and repair activities would be classified as renovations for purposes of the rule. Commenters requested more specific criteria to facilitate differentiation between a renovation activity and routine maintenance or repair. One commenter suggested that modeling the definition of regulated activities under this rule after EPA's Asbestos Program (which used both the Standard Industrial Classification (SIC) codes and the OSHA list of construction tasks) would result in the inclusion of too broad a range of activities.

Based on the responses received from commenters, EPA determined that both the SIC codes and the OSHA list of construction tasks lacked the specificity necessary to aid EPA in developing its list of regulated renovation activities. The OSHA list was developed to address a far broader range of construction tasks than should be regulated under section 406(b); likewise, using SIC codes as a way of creating worker categories was determined to be inadequate in capturing the appropriate spectrum of activities.

In general, commenters also suggested that neither cost nor the overall size of the work was a valid criterion for determining exposure to lead-based paint hazards and indicating risk. EPA agrees, and has also determined that a *de minimis* cost level would be difficult to interpret, especially when compensation was provided in non-monetary terms or when such activities were part of a larger service or maintenance agreement.

After careful review of the comments on these proposed approaches, EPA has decided to define renovation by focusing on the potential disruption of paint (the key source of exposure that may occur during renovation). One commenter voiced specific concerns that the proposed approach to defining renovation was too broad and suggested that EPA focus on activities that are likely to generate a risk of lead exposure. In response to that and other comments, EPA modified the definition to include all renovation activities except those which do not disturb painted surfaces.

EPA recognizes that it is necessary to distinguish between renovation

activities and those minor activities that are required during the maintenance of a residence. EPA believes that requiring maintenance workers to distribute hazard information during the implementation of regular tasks would pose an undue burden on owners and their staffs. A 2 square foot per component *de minimis* level has been adopted from the June 1995 *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* as a means of differentiating between large-scale renovation activity and minor maintenance activities which pose a lower likelihood of creating a lead hazard. This same *de minimis* level has also been used by the National Institute of Building Sciences (NIBS) in its draft *Regulatory Models for Lead Poisoning Prevention* report. This draft report is the result of a consensus process involving both public (e.g., Federal and State governments) and private (e.g., landlord associations, builders) sectors. EPA believes that this revised definition provides a common sense approach which is consistent with standard industry practices (as captured in the aforementioned guidelines and the *de minimis* level's use in the NIBS report), along with clear guidance and direction to the regulated community, as to which renovation activities will trigger the requirements of this rule.

EPA recognizes that emergency situations occur which require renovation activities to be conducted within a time frame precluding advance notification. Such emergencies would typically involve structural or equipment failure that could lead to endangerment to public health or substantial property damage if not repaired immediately. To address these situations, EPA has included a category of *Emergency renovation operations* (see § 745.83 of the regulatory text) that are exempted from the requirements of this rule.

In addition, EPA has exempted renovations performed (in target housing) on components that have been determined, by an inspector (certified pursuant to either Federal regulations at 40 CFR 745.226 or an EPA-authorized State certification program), to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight (see § 745.82(b)(3) of the regulatory text).

D. Definitions

EPA received many comments that suggested the definitions used for this rule retain full consistency with existing State, local, and industry practice. Below is a brief discussion of

definitions that apply to this rule. While these definitions were included in the proposed rule, most have since been promulgated as part of related rulemakings under Title X and Title IV of TSCA. Only the definitions of "emergency renovation operations," "pamphlet," "person," "renovation," and "renovator" are promulgated in this rule. However, all definitions that were proposed for use in this rule are discussed below.

Common area means a portion of a building generally accessible to all residents/users, including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

This definition is unchanged from the proposed rule and can be found in 40 CFR 745.103. Although EPA received a comment suggesting to limit the definition, EPA has decided to retain the definition of common area also being used in other regulations mandated by Title X and Title IV of TSCA. These other regulations require a broader interpretation of the term (e.g., the inclusion of residence exteriors within the term's scope), and for consistency, EPA elected to adopt a single definition for all the rules. EPA has concluded that this discussion of the term's broad interpretation should sufficiently address commenter requests for an explicit inclusion of renovation work being performed upon a residence's exterior surfaces and surfaces in proximity to the residence within the rule's notification requirements.

However, because today's rule affects only residential housing, applicability of the definition for section 406(b) purposes is limited to common areas in residential housing.

Emergency renovation operations means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

In the March 9, 1994 proposal, EPA specifically requested comment on whether the rule should include provisions for emergency renovations and other situations where unusual circumstances necessitated immediate action. EPA received a comment indicating that this definition was too broad. The commenter argued that only catastrophic situations such as fire, explosion, or imminent structural collapse required a response so prompt

as to preclude notification and that this exemption would be subject to abuse. EPA does not believe that emergency renovation activities are defined only by life-threatening situations. To ensure that the regulation does not unduly impair a property owner or manager's ability to react quickly to situations that present a sudden hazard to public safety or a sudden threat of significant property damage, EPA has added a specific exemption for emergency renovations and has provided the above definition. EPA has based its definition on the language used within EPA's National Emission Standards for Hazardous Air Pollutants (Asbestos) (40 CFR part 61, subpart M).

Multi-family housing means a housing property consisting of more than four dwelling units.

This definition is unchanged from the proposed rule. EPA received a comment suggesting that either this definition be changed to accommodate housing consisting of two, three, and four dwelling units, or that a definition covering that number of units be created. EPA may propose and seek comment on such a modification in the near future.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner is considered the mortgagor.

EPA received a comment on the proposed definition's inclusion of third party managers or representatives. The commenter asserted that since management agreements between owners and third parties clearly establish that the responsibility for all property decisions reside with the owners, owners should be clearly differentiated from third party fee property managers. EPA agrees with the commenter. For the sake of consistency with section 1018 of the Residential Lead-Based Paint Hazard Reduction Act, EPA has revised the definition (see 40 CFR 745.103) of owner to clarify its applicability to trusts and to distinguish between owners (mortgagor) and mortgage lenders (mortgagees). The definition was also revised by removing the representative portion.

Pamphlet means the EPA pamphlet developed under section 406(a) of TSCA for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or any State or Tribal pamphlet approved by EPA pursuant to

40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

EPA added this definition to specify and identify either the lead hazard information pamphlet developed under section 406(a) of TSCA or any EPA-approved State pamphlet.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

EPA received several comments on this definition regarding whether the sovereign immunity of the United States is waived in relation to this rule. Congress provided such a waiver in section 408 of TSCA. EPA modified this definition so that it is consistent with the definition promulgated in § 745.223.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

EPA requested and received many comments on the proposed definition. EPA agrees with the commenters who stated that the proposed definition did not provide adequate guidance in defining a regulated transaction. EPA has, therefore, revised the definition to remove the unclear references to hazard levels involved in the activities, believing that it is not appropriate to expect each potential renovator to determine what is and what is not a "hazardous" activity. Instead, EPA has developed a definition that focuses on disturbance of paint, the key source of exposure that may occur during renovations.

Further, EPA has added an applicability section (§ 745.82) that lists activities that are excluded. This section excludes emergency renovations and renovation activities that pose little likelihood of creating lead hazards. The specifically excluded activities are:

minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component; emergency renovation operations; and renovations in target housing in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State certification program) that lead-based paint is not present in the area affected by the renovation, where the renovator has obtained a copy of the determination.

EPA believes that the definition, coupled with the list of excluded activities in the applicability section, provides the regulated community with a clearer direction than that provided in the proposed rule. EPA also thinks that the definition and applicability sections enable this rule to cover all potentially hazardous renovation activities and exclude those that pose little likelihood of disturbing significant amounts of painted surface.

Renovator means any person who performs for compensation a renovation.

This definition was changed from the proposed rule by deleting the phrase "of target housing or public buildings" which appeared after the term "renovation." This change makes the term "renovator" consistent with the term "renovation," which is not limited to particular types of structures. Further, because future rules issued pursuant to section 402(c) of TSCA may apply, regulations promulgated under section 402(a) to renovation and remodeling in target housing, public buildings constructed before 1978, and commercial buildings, EPA believes the terms "renovation" and "renovator" should be defined in such a way that they can apply to all such structures. This change does not affect the scope or applicability of the rule, because the applicability provision at § 745.82 of the rule will limit the rule to renovations of target housing performed for compensation. Finally, as discussed in the proposal, although EPA considers that maintenance staff retained by the owners of buildings may be considered renovators for the purpose of this rule, an exclusion for routine maintenance and operations activities is provided in the applicability section of the rule.

Residential dwelling means:

- (1) A single-family dwelling, including attached structures such as porches and stoops; or
- (2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the

home or residence of one or more persons.

This definition, drawn from the statute, is unchanged from the proposal (see 40 CFR 745.103).

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

This definition was provided by the statute and is unchanged (see 40 CFR 745.103).

0-Bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

This definition, which can be found in 40 CFR 745.103, is drawn from the HUD 1994 housing survey, as a standard definition for 0-bedroom housing. It was added to this rule to provide both clarification of the term as it is used in the definition of target housing and consistency with the other regulations under Title X and TSCA.

E. Lead Hazard Information Pamphlet

In the August 1, 1995 Federal Register, EPA issued a Notice of Availability for the lead hazard information pamphlet entitled *Protect Your Family From Lead In Your Home*. EPA and HUD will distribute this pamphlet under several Congressional directives that will be implemented in separate rulemaking initiatives, including this rule.

The pamphlet has been made available to the general public as well as the regulated community. Single copies of the pamphlet are available in both English and Spanish from the NLIC, by calling 1-800-424-LEAD (TDD 1-800-526-5456). Multiple copies are available through the Government Printing Office (GPO), and may be ordered by calling the GPO Order Desk at (202) 512-1800, faxing (202) 512-2233, or writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Request the publication by title, *Protect Your Family From Lead In Your Home*, and/or GPO stock #055-000-00507-9.

The pamphlet may be reproduced without permission from EPA or CPSC. EPA is encouraging persons to make their own reproductions of the pamphlet. Persons who wish to reprint the pamphlet may obtain negatives or black and white reproducible copy from the NLIC at 1-800-424-LEAD. Any copies reproduced for use in complying

with this rule, however, must be copied in full, and may not be revised in any way unless those actions are meant to add or properly reference State or local sources of information. Also, persons wishing to reprint the pamphlet may attach their company name, logo, and contact information on the back cover in the space provided at the bottom of the page.

In addition, EPA has developed a program under section 404 of TSCA in which States and Tribes may apply to EPA for authorization to develop and distribute their own pamphlets for compliance with this rule. That program now allows States and Tribes that have obtained such authorization to substitute the State-developed pamphlet for the Federal version for compliance with this rule. EPA provided preliminary approvals for pamphlet substitutions to the States of California and Massachusetts in August 1996.

This is a change from the proposed section 406(b) rulemaking. The section 406(b) proposal included language preventing State and Tribal modification of the pamphlet. EPA has since concluded that States and Tribes should be able to craft their own pamphlets so long as they include a number of basic elements.

In anticipation of this change, EPA included specific language in the preamble to the section 404 rule (under Unit I.X.) that was published August 29, 1996 (see FR 45802, 45803). That unit describes the minimum elements that must be present in a State or Tribal program in order for that State or Tribe to receive authorization from EPA (see 40 CFR 745.326). The unit also acknowledges the need for flexibility in the amount of detail and supplemental information to be included in a pamphlet for State or Tribal use. EPA has concluded that this flexibility is required due to the variety of particular, local informational and communication challenges that States and Tribes may face.

This change makes the section 406(b) program consistent with the rest of the lead program under Titles IV and X. This change also gives renovators a greater amount of flexibility: now renovators may choose between disseminating the EPA pamphlet or pamphlets crafted pursuant to section 404 (40 CFR 745.326).

EPA received comments concerning the pamphlet emphasizing that both it and the acknowledgment need to be available in languages other than English. As noted above, EPA concurred and has made the pamphlet available in Spanish. However, it was not considered reasonable to require the

renovator to provide translations into any language requested by the resident, nor does EPA have the resources to unilaterally develop, print, and distribute the pamphlet in every language represented in the United States. EPA is pursuing the feasibility of obtaining additional translations through public and private partnerships. Several private organizations are in the midst of developing the pamphlet in languages other than Spanish and English. If you have any questions concerning those efforts, consult the parties listed in the "FOR FURTHER INFORMATION CONTACT" section.

F. Information Distribution Requirements

1. **Renovations in living units.** EPA's modifications of the proposed information distribution requirements provide the regulated community with flexibility while ensuring appropriate communication with owners and occupants whose living units are undergoing renovations. Commenters expressed concerns about the proposed provision regarding the feasibility of requiring a signed acknowledgment from the "head of a household," noting that it could be extremely difficult to locate or guarantee accurate identification of such an individual. In the final rule, EPA permits any adult occupant of an affected target housing unit to acknowledge receipt of the pamphlet.

A second concern involved using the acknowledgment of the receipt of the pamphlet as an indication of the owner or occupant's awareness of the potential health hazards associated with renovations that disturb lead-based paint. Commenters indicated that a person who has just received a pamphlet would not have had time to read it. He or she could not realistically be expected to attest to any level of comprehension of the potential risks. EPA revised the final rule to focus solely on acknowledging receipt of the pamphlet.

2. **Delivery requirements.** EPA received numerous comments regarding this section. A prevalent comment expressed concern with requiring the renovator to obtain a signed acknowledgment. Commenters suggested scenarios of owners and occupants refusing to sign the acknowledgment or being unavailable during normal business hours, when such deliveries would typically occur. Commenters stated that holding the renovator accountable for such actions beyond his or her control was inappropriate.

After careful consideration, and in keeping with the goal of allowing flexibility where appropriate, the final rule allows the renovator several options for distributing the pamphlet, including personal delivery by the renovator or a designated representative, self-certification for unsuccessful attempted personal deliveries, and the option to mail the pamphlet.

The final rule permits either the renovator or a designated representative (such as a landlord) to deliver the pamphlet and obtain the acknowledgment. However, when using a designated representative, the renovator remains responsible for compliance with this rule. This provides renovators with additional flexibility with regard to delivery, but still ensures that they retain the responsibility for compliance with the rule and maintaining the appropriate records. EPA also recognizes that there may be situations when an adult occupant cannot be reached or simply refuses to sign an acknowledgment. Under these circumstances, the renovators, or their designee, will be allowed to certify in writing that the delivery was attempted, and briefly explain what was done and why a signed and dated acknowledgment could not be obtained. The renovator is nonetheless required to deliver a copy of the pamphlet to the affected housing unit.

Another option allows the renovator to deliver the pamphlet by mail after receiving some receipt or proof of mailing. Of course, the renovator may use more expensive methods of delivery (e.g., certified mail, registered mail), but obtaining a certificate of mailing from the Post Office is the minimum required.

Notwithstanding the renovator's approach, the renovator must either have the proper documentation (i.e., signed and dated acknowledgment, or self-certification) or have purchased and received a certificate of mailing from the Post Office at least 7 days before the commencement of renovation activities.

3. *Content of Acknowledgment Statements.* Commenters provided suggestions as to the specific language of the acknowledgment statements. Several commenters suggested that the statements include detail regarding lead hazards and a reference to the pamphlet, while others suggested that obtaining acknowledgment would be overly burdensome or cause delays in renovation activities. After reviewing the comments, EPA decided to delete specific acknowledgment language from the rule in order to reduce the burden on the regulated community and permit

a greater degree of flexibility without compromising the safety of owners and occupants. However, to provide guidance to the regulated community, § 745.88 has been added, offering suggested language for acknowledgment.

4. *Renovations in common areas.* The final rule discusses target housing in terms of dwelling units and common areas (as would be found in multi-family housing). Pre-renovation notification activities for renovations in common areas differ slightly from those in dwelling units. The main difference is that the renovator is not required to distribute the pamphlet and obtain an acknowledgment from the occupants regarding renovations performed in common areas, although the renovator must notify residents of the upcoming renovations and make the pamphlet available upon request, prior to the renovation, at no charge.

Although some commenters suggested that all residents should receive a copy of the pamphlet before any work begins in common areas, EPA does not believe that the creation of a system in which occupants receive a pamphlet every time any kind of work occurs within the common areas of a building is the most efficient method for achieving the informational objectives contemplated by section 406(b). Since renovation activities may occur in various hallways or lobbies of a building on a frequent basis, it could be impractical to require a renovator to provide all occupants with a new pamphlet before the commencement of each renovation, especially in dwellings with large numbers of residential units. Such a requirement would be difficult to implement and enforce, and the impact of the pamphlet would likely decrease with each time it was given. The renovator is required, however, to provide the owner with a copy of the pamphlet and obtain the signed, dated acknowledgment thereof.

Although the renovator is not required to distribute the pamphlet and obtain acknowledgments from each occupant in the building, the renovator must still notify (no more than 60 days prior to the renovation) each unit individually in writing of the renovation work that is to occur, including a description and locations of the activity, a statement that lead-based paint may be disturbed, and the expected starting and ending dates. Further, the renovator must make copies of the pamphlet available upon request and provide information on how to obtain them. The notification process could be accomplished by distributing a letter or flyer containing the required

information to each living unit within the dwelling. Notification activities could be performed by the renovator, by the owner of the dwelling or other representative, on behalf of the renovator. Even if the owner or other representative agreed to perform the notification activities, however, the responsibility to assure compliance would still rest with the renovator. In any case, the notification must be received before the work is commenced.

EPA recognizes that in some cases, large renovations could take an extended period of time or cover several different common areas of multi-family housing. In that case, if the initial notification provides accurate information on the scope of renovations planned in the various areas, with an accurate schedule of their performance, then that initial notification would be sufficient to meet the requirements of this rule. If the scope, location, or time frame of the activities change in a way not reflected in the original notification, then the renovator is obligated to provide updated information in an additional notification. This updated information is necessary to ensure that owners and occupants can, if necessary, adequately protect themselves from exposure to lead-based paint.

EPA believes that owners or renovators in the original notification will allow a generous amount of time for the completion of the renovation and define a comprehensive scope of the work to ensure that renotification (pursuant to § 745.85(b)(4)) will not be necessary. Therefore, EPA has chosen not to include the costs of this provision in the Regulatory Impact Analysis (see Unit VII. of this preamble) for this rulemaking. EPA has concluded that these provisions for notifying occupants of common area renovations strike the appropriate balance between public access to information and burden on the regulated community.

G. Recordkeeping Requirements

EPA requested comment on whether the recordkeeping requirements were reasonable, too stringent, or not stringent enough. The comments were mixed and varied. A significant number of commenters argued that the length of the renovation job was a sufficient retention period, and an equally significant number of commenters argued to retain the 3-year recordkeeping requirement of the proposal. Based on a review of the comments provided, EPA will retain the 3-year recordkeeping requirement as proposed.

Thus, renovators are required to retain and, if requested, make available to EPA

or its authorized delegates (i.e., States and Tribes with EPA-approved programs) all records necessary to demonstrate compliance with the requirements of this rule for 3 years following completion of the renovation activities on target housing. These records include any reports certifying that lead-based paint is not present in the housing; the signed, dated acknowledgments of receipt for delivery of the pamphlet; the signed, dated certifications of the inability to obtain an acknowledgment of receipt; the certificate of mailing for delivery of the pamphlet; and the signed, dated acknowledgments and records of notification activities for renovations in common areas.

H. Enforcement and Inspections

EPA received some comment on the enforcement provisions discussed in the statute and the proposed rule. A few commenters expressed concern about EPA's ability to oversee and enforce the requirements of section 406(b), while other commenters sought assurance that the Agency recognized the importance of education and outreach to the regulated community. Since the enforcement and inspection provisions in this rule derive directly from the authorizing statutory language of TSCA, this rule retains the enforcement language largely as proposed. The section number was changed to reflect modified numbering, and the section heading was renamed so that it could more simply indicate that it addressed EPA's enforcement and inspection authority. Below is a discussion of the general enforcement authority provided by TSCA (including Title IV), along with some discussion of the process EPA envisions for the development of a sensible and effective lead enforcement program.

Section 409 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under Title IV of TSCA. Therefore, failure to comply with any provisions of this final rule by regulated entities would be a violation of TSCA. In addition, section 15 of TSCA makes it unlawful for any regulated entity to fail or refuse to permit entry or inspection (of business records in this instance) by EPA or its authorized delegates as required by section 11 of TSCA. Violators may be subject to both civil and criminal sanctions. Under the penalty provision of section 16 of TSCA, any person who violates sections 15 or 409 may be subject to a civil penalty of up to \$25,000 per day for each such violation. Knowing or willful violations of any provision of this final rule could

lead to the imposition of criminal fines of up to \$25,000 per day and imprisonment for up to 1 year for each such violation.

The above-described provisions reflect the overall enforcement authority available to EPA under TSCA. While EPA intends to use the inspection and enforcement tools available to ensure compliance with this final rule, it is also EPA's intent that outreach and compliance assistance be major components of the section 406(b) program so that renovators are aware of the new requirements and their subsequent obligations. EPA also intends to bring clarity and predictability to the enforcement process for section 406(b). EPA is developing a mechanism that achieves a common sense relationship between a particular "violation" of section 406(b) and a particular enforcement response. This includes issuing notices of warning (without penalties) as appropriate to let individuals know that they are out of compliance and give them an opportunity to come into compliance, and ensuring that willful and repeated violators are appropriately penalized. However, numerous factors (many of which are mandated by TSCA) are involved in the Agency's determination of a proper enforcement response. EPA is currently developing an "Enforcement Response Policy" (ERP) for the requirements of this final rule.

I. Confidential Business Information

EPA received no comments on this section. However, in order for readers to understand what is required for the submission of confidential documents, EPA has included the following two paragraphs to describe those procedures (per 40 CFR part 2, subpart B):

Those who assert a confidentiality claim for submitted information must provide EPA with two copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential. EPA will place the second copy of the submission in the public file.

EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

VI. Authorization of State Programs

Under section 404(a) of TSCA and its implementing regulations, States and

Tribes may apply to administer and enforce the standards, regulations, and requirements established under this rule. Section 404(b) states that the Administrator may approve such an application only after finding that the State or Tribal program is at least as protective of human health and the environment as the Federal program established according to the mandate of sections 402 and 406 of TSCA, and that it provides adequate enforcement.

The State or Tribal program must have regulations or procedures that contain the following: (1) Requirements for distribution of an approved lead hazard information pamphlet before renovations performed for compensation in target housing commence; and (2) provisions for the adequate enforcement of the above program.

In providing an approved lead hazard information pamphlet meeting the requirements of section 406(a) of TSCA, the State or Tribe may either require distribution of: (1) The lead hazard information pamphlet developed by EPA, under section 406(a) of TSCA, entitled *Protect Your Family From Lead In Your Home*, or (2) an alternative pamphlet or package of lead hazard information that has been approved by EPA. Any pamphlet or package of information submitted for EPA approval must contain the content and design elements as mandated by section 406(a) of TSCA. The procedures for submitting an application (40 CFR 745.324) were made final in a separate Federal Register notice.

VII. Summary of Regulatory Impact Analysis

EPA has prepared a Regulatory Impact Analysis (RIA) which examines the potential costs, benefits, and impacts of these regulations for the disclosure of potential lead-based paint hazards prior to residential renovations. The complete RIA is included as a part of the public record for this rule and is available through the TSCA Docket (see Unit VIII. of this preamble for address).

A. Background and Framework for Analysis

Those parties directly affected by the rule are renovators (which may include property managers), occupants of owner-occupied and rental housing, and owners of rental property. EPA found the required activities which give rise to regulatory burden imposed on the affected parties to fall into four categories for cost estimation purposes:

- Start-up costs, which include learning the rule's requirements and establishing compliance procedures.

- Disclosure activities, which refer to the costs resulting from the actual transfer of information and obtaining of needed acknowledgments.

- Recordkeeping, which results principally from the requirement that signed acknowledgment statements must be retained by the provider of the information.

- Materials, which is linked primarily to the disclosure requirement, as the lead hazard information pamphlet must be purchased or photocopied (acknowledgment statements must also be provided). Costs may also be incurred for filing where a high number of acknowledgment statements are generated (e.g., renovators), though such burden was estimated to be quite modest.

The requirements of section 406(b) of TSCA fall on parties providing renovation services for compensation to owners of "target housing," which is defined to be any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

To estimate the impacts of the rule, data were sought pertaining to the number of affected parties; the frequency with which affected renovation transactions are completed; and the incremental costs, in labor and materials, added to each transaction by the regulations.

B. Profile of Sectors Affected

Four major industry sectors were identified as affected: SIC codes 15 (General Contractors and Operative Builders); 17 (Special Trade Contractors); 651 (Real Estate Operators and Lessors); and 653 (Real Estate Agents and Managers). In total, EPA estimates there to be 482,000 establishments potentially affected by the rule. The greatest portion of this sum is expected to fall within SIC 17, where 199,000 establishments could be subject to the rule's requirements. Ninety-nine thousand establishments were estimated to be potentially affected in SIC 15. Also subject to the rule are as many as 92,000 business establishments falling within each of SICs 651 and 653.

Employment data for these industries were obtained for occupations most likely to be involved in transactions subject to the rule. EPA estimates that 2,272,000 contractor personnel (SICs 15 and 17) and 243,000 property managers (SICs 651 and 653) may be affected.

With regard to transaction volume, EPA found that 12.2 million renovation

events in owner-occupied target housing and 6.3 million renovation events in rental target housing that occur each year may be subject to the rule.

C. Estimated Costs to Private Parties and Government

EPA found that due to limitations of the data, the RIA cost estimates could not distinguish the frequency of regulated transactions in target housing from those transactions occurring in housing not subject to the information disclosure rules. While completing the final analysis, EPA also determined that it was not possible to establish how frequently transactions performed in target housing would be excluded from regulatory coverage (e.g., jobs disturbing less than 2 square feet of painted surface). For those reasons, EPA believes that both the proposed and final regulatory impact analyses overstate the impact of this rulemaking.

The first private party cost category, start-up costs, represents about one-third of overall annual compliance costs at \$13.2 million. Factors affecting the magnitude of these costs include the number of employees having to familiarize themselves with the regulations, both initially (employees in the existing workforce) and over time (new entrants to the affected sectors); the time required to learn the activities which must be undertaken in order to comply; and the hourly compensation of affected employees.

Disclosure event costs of \$57.5 million constitute the greatest portion of overall compliance costs. Factors affecting the magnitude of these costs include the frequencies of regulated events; the time involved in performing required activities, such as providing the owner/tenant with the required information and obtaining the required signatures; and the hourly compensation of all involved parties.

Recordkeeping and materials costs comprise a relatively modest share of overall annual costs at \$3.7 million and \$7.8 million, respectively. Factors affecting the magnitude of these cost items include the number of affected parties per transaction; the frequency of transactions; the costs of acquiring/duplicating documents, which include the lead hazard information pamphlet and signed acknowledgment statements; and costs to maintain documents. This leads to a total estimated annual cost to private parties of \$82.2 million.

To administer the final regulation, EPA estimates government resources totaling between \$2.4 million (low estimate) and \$4.3 million (high estimate) will be required to conduct a number of activities, including:

inspections; violation case management; establishment and maintenance of cooperative agreements; compliance assistance; development of performance measurement criteria; and management. Therefore, the total annual costs for this rule, to private parties and the government, is estimated to be between \$84.6 million (low estimate) and \$86.5 million (high estimate).

D. Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Renovations on Small Businesses Regulatory Flexibility Analysis

EPA investigated the potential impacts of the rule on small businesses, and has prepared a regulatory flexibility analysis which is included in the RIA. While a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to have significant economic impacts on such establishments. That analysis is summarized separately in Unit X.B. of this preamble.

E. Assessment of Benefits

The market imperfection that the rule is intended to correct is the lack of information available to homeowners and tenants regarding the potential health risks accompanying residential renovations that are related to lead-based paint. Under the rule, general information about risks associated with lead-based paint will be provided through the provision of the pamphlet. The failure of the marketplace to currently provide this information means that owners and occupants may not be able to react appropriately to avoid or prevent such risks.

This rule will generate direct benefits by providing homeowners and tenants information which they value and otherwise can acquire only through their own effort at some cost. Two approaches for estimating the benefits associated with having information are discussed in the Regulatory Impact Analysis (RIA): a contingent valuation study, or a study of the transaction costs to buyers and renters of obtaining similar information. However, an information base and the associated accepted analytic methods are not yet available; thus, the direct benefits of this rule are not quantified. Nevertheless, EPA believes that the information provided in the qualitative analysis presented in the RIA adequately serves to inform and support the Agency's decision to promulgate this rule.

EPA also expects indirect or "follow-on" benefits from the rule, as the parties to the renovation transaction comprehend and use the information in

the pamphlet. The regulation does not require that the pamphlet be read or that actions be taken to reduce lead-based paint hazards; thus, the extent to which lead exposure is reduced depends upon how transaction participants respond to the information provided to them by this rule. Such responses will involve both costs and benefits. As discussed in the RIA, these costs and benefits are extremely difficult to quantify because doing so requires the prediction of behavior and the isolation of the many factors that influence behavior. In any event, EPA believes that the benefits of any follow-on activities will outweigh their costs, because any such actions will be undertaken voluntarily by the parties to the renovation transaction.

VIII. Rulemaking Record

A record for this final rule has been established under docket control number "OPPTS-62131." The public version of this record (which does not contain any information claimed as CBI) is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in EPA's TSCA Docket or Nonconfidential Information Center (NCIC), Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

The rulemaking record contains information considered by EPA in developing this final rule. The record includes: (1) All *Federal Register* notices, (2) relevant support documents, (3) reports, (4) memoranda and letters, and (5) hearing transcripts, responses to comments, and other documents related to this rulemaking.

Unit IX. of this preamble contains the list of documents which the Agency relied upon while developing this final regulation and can be found in the docket. Other documents, not listed there, such as those submitted with written comments from interested parties, are contained in the TSCA Docket Office as well. A draft of today's final rule submitted by the Administrator to the Office of Management and Budget for an interagency review process prior to publication of the rule is also contained in the public docket.

IX. References

1. Alliance to End Childhood Lead Poisoning, Preventing Childhood Lead Poisoning: The First Comprehensive National Conference: Final Report, Washington, DC, 1991.
2. CDC, 1991. U.S. Centers for Disease Control and Prevention, "Preventing Lead Poisoning in Young Children: A Statement By the Centers for Disease Control." Atlanta, GA, October 1991.

3. CPSC, 1977. "Notice Reducing Allowable Levels of Lead in Lead-Based Paint." *Federal Register*, September 1, 1977: 42 FR 44199.

4. EPA, 1995. U.S. Environmental Protection Agency, "Report on the National Survey of Lead-Based Paint in Housing: Base Report." Washington, DC: (EPA #747-R95-003).

5. HUD, 1995. U.S. Department of Housing and Urban Development, Task Force on Lead-Based Paint Hazard Reduction and Financing, "Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing: Final Report." Washington, DC: HUD-1542-LBP.

6. HUD, 1990. "Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing: Notice." *Federal Register*, April 18, 1990: 55 FR 14556.

7. HUD, 1994. Department of Housing and Urban Development, "National Housing Survey." Washington, DC.

8. HUD, 1995. Department of Housing and Urban Development, "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing." Washington, DC.

9. Pirkle, 1994. Pirkle, J.L., Brody D.J., Gunter E.W., Kramer R.A., Paschal D.C., Flegal K.M., Matte T.D., "The Decline in Blood Lead Levels in the United States." *Journal of the American Medical Association*, 272(4): 284-291.

- 9a. CDC, 1997. "Update: Blood Lead Levels - United States, 1991-1994." *Morbidity and Mortality Weekly Report*, 46(7): 141-146.

- 9b. CDC, 1997. Erratum: Vol. 46, No. 7. *Morbidity and Mortality Weekly Report*, 46(26).

10. EPA, 1995. "Lead Hazard Information Pamphlet; Notice of Availability." *Federal Register*, August 1, 1995: 60 FR 39167.

11. National Institute of Building Sciences, 1996. "Regulatory Models for Lead Poisoning Prevention: Lead-Based Paint Regulatory Infrastructure Project." Published draft; Washington, DC, December 2, 1996.

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this is a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), because this action may raise novel legal and policy issues arising from the implementation of new statutory mandates under Title IV of the Toxic Substances Control Act (15 U.S.C. 2681-

2692). This action was therefore submitted to OMB for review, and any changes made during that review have been documented in the public record.

EPA has prepared an economic analysis of the impact of this action for renovation activities, which is contained in a document entitled *Regulatory Impact Analysis of Lead-Based Paint Hazard Disclosure Regulation for Residential Renovations* (hereinafter referred to as the RIA). This document is available as a part of the public record for this action and is summarized in Unit VII. of this preamble. EPA finds that the rule will not have an annual effect on the economy of \$100 million or more, will not result in major increases in costs or prices, and is not anticipated to have significant adverse effects on competition, employment, investment, or productivity in the relevant sectors.

EPA estimates the annual costs to private entities to be \$82 million and the annual costs to government to range from \$2.4 to \$4.3 million. These estimates include costs for rule familiarization, information disclosure and obtaining required signatures, recordkeeping, materials costs and, for government, costs of administration. EPA estimates that the provisions of the rule would add about \$2.00 to \$4.00 to the cost of each transaction for each entity impacted. The average unit costs per renovation activity is \$4.52.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. Although small businesses were found to constitute the great majority of affected entities, the estimated individual cost impacts of \$2.00 to \$4.00 per transaction (e.g., the cost to renovation contractors, specialty trade contractors, or rental property managers on a per unit basis), are quite insignificant. EPA has prepared a final analysis of small entity impacts as part of the RIA, which is summarized in Unit VII.D. of this preamble and briefly discussed here.

As demonstrated in the analysis, all provisions were carefully crafted to minimize impacts on all regulated entities. Similarly, due to the high proportion of affected establishments represented by small business, the Agency's review and response to public comments, particularly comments relating to cost estimates presented in the RIA and which formed the basis of the flexibility analysis, have been incorporated into the analysis by

reference. The Regulatory Flexibility Act also requires a statement of the need for, and objectives of, the rule to be provided. This statement appears in Unit III. of this preamble, and is also incorporated into the analysis by reference.

In assessing small business impacts, EPA first developed an establishment profile for each major sector: SIC 15 (General Contractors and Operative Builders); SIC 17 (Special Trade Contractors); SIC 651 (Real Estate Operators and Lessors); and SIC 653 (Real Estate Agents and Managers). This profile indicated that approximately 80 to 90% of all establishments in each sector fell within the 1-9 employee size class, and roughly 98% had fewer than 50 employees. Thus, a substantial number of small firms are estimated to be potentially affected by the rule.

To measure the cost impacts of the rule on these establishments, representative or model establishments were designed. These model establishments corresponded to typical establishments, with respect to number of employees and annual transaction volume, in each affected sector. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a multi-trade renovation contractor, regulatory costs were found to represent from 0.04 to 0.09 percent of labor and overhead costs. In the case of a specialty trade contractor, impacts were somewhat higher, ranging from 0.21 to 0.49%. An establishment engaged in rental property management was projected to sustain impacts of 0.73 to 1.44%.

In developing these impact ratios, EPA was unable to distinguish in its estimates of transaction activity how frequently transactions might take place in target housing as opposed to housing not subject to the information disclosure rules. Further, it was not possible to determine how frequently transactions performed in target housing would be excluded from regulatory coverage (e.g., jobs disturbing less than 2 square feet of painted surface). For these reasons, the number of transactions incorporated in the flexibility analysis may exaggerate the number of jobs actually subject to the rule, resulting in impacts which most likely overstate true impacts.

While a large number of small establishments will be potentially

affected by the rule, the analysis did not suggest cost impacts to be significant for such establishments. EPA received a number of comments relating to the costs of the rulemaking. Most of those comments centered on a belief that EPA underestimated the burden hours of (and thereby the costs associated with) each transaction. EPA disagrees with those commenters' assertions. Information EPA collected suggested that in the majority of affected transactions, section 406 requirements could be met as part of a pre-existing process. Information regarding the frequency with which more complex, time-consuming scenarios might occur suggested that those circumstances would be in the minority. Further, EPA believes the flexibility afforded the renovator by the rule will be of particular advantage to contractors who may foresee difficulties in carrying out the notification requirements.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1669.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460, or by calling (202) 260-2740. The information collection requirements in this rule are not effective until OMB approves them.

The collection of information required in this rule has an estimated recordkeeping burden averaging 6.2 minutes per response, and requires 5.7 hours per recordkeeper, annually. These estimates include time to review instructions, search existing data sources, gather and maintain the data needed, and complete the collection of information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. Upon OMB approval, EPA will issue a notice in the *Federal Register* to announce OMB's approval and to make a technical amendment to include a reference to this approval in 40 CFR part 9.

Send comments on the Agency's accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, at the address listed above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act and Executive Order 12875

Pursuant to Title II of the Unfunded Mandates Reform Act, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local, and tribal governments, and the private sector. This action does not result in the annual expenditure (in the aggregate) of \$100 million or more by any State, local, or tribal government, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 section above.

In addition to the consultations prior to proposal, EPA has had several informal consultations regarding the proposed rule with some States through the EPA Regional Offices and at regularly scheduled State meetings. No significant issues or information were identified as a result of EPA's discussion with the States.

In addition, since the issuance of this rule is not discretionary, the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), do not apply. The EPA is required under Title IV of the Toxic

Substances Control Act (15 U.S.C. 2681-2692) to promulgate these regulations.

E. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. Recognizing that lead-based paint hazard exposure is more prevalent in those communities, the Agency has developed a Spanish language version of the pamphlet and is seeking partners to investigate its translation into other languages. The Agency also requires that the signed acknowledgment statements be in the same language as the contract it accompanies.

F. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit X.A. above). This action does, however, address environmental health or safety risks affecting children, in that this rule ensures that owners and occupants of target housing are provided information concerning the potential hazards of lead-based paint exposure before certain renovations are begun, and children are particularly susceptible to the hazards of lead. This information allows these individuals to consider taking appropriate precautions to avoid exposure to the lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing with lead-based paint. In fact, children under the age of 6 are the primary beneficiaries of this rule, as well as the Agency's overall Lead Program.

XI. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 552(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

today's *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 745

Environmental protection, Abatement, Housing renovation, Lead, Lead-based paint, Reporting and recordkeeping requirements.

Dated: May 22, 1998.

Carol M. Browner,
Administrator.

Therefore, 40 CFR chapter I is amended as follows.

PART 745—[AMENDED]

1. The authority citation for part 745 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

2. Subpart E is added to read as follows:

Subpart E—Residential Property Renovation

Sec.	Purpose.
745.80	Effective date.
745.81	Applicability.
745.82	Definitions.
745.83	Confidential business information.
745.84	Information distribution requirements.
745.85	Recordkeeping requirements.
745.86	Enforcement and inspections.
745.87	Acknowledgment and certification statements.

Subpart E—Residential Property Renovation

§ 745.80 Purpose.

This subpart contains regulations developed under Title IV (15 U.S.C. 2681-2692) of the Toxic Substances Control Act and applies to all renovations of target housing performed for compensation. The purpose of this subpart is to require each person who performs a renovation of target housing for compensation to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

§ 745.81 Effective date.

The requirements in this subpart shall take effect on June 1, 1999.

§ 745.82 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all renovations of target housing performed for compensation.

(b) This subpart does not apply to renovation activities that are limited to the following:

(1) Minor repair and maintenance activities (including minor electrical

work and plumbing) that disrupt 2 square feet or less of painted surface per component.

(2) Emergency renovation operations.

(3) Renovations in target housing in which a written determination has been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, where the renovator has obtained a copy of the determination.

§ 745.83 Definitions.

For purposes of this part, the definitions in § 745.103 as well as the following definitions apply:

Administrator means the Administrator of the Environmental Protection Agency.

Emergency renovation operations means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

Multi-family housing means a housing property consisting of more than four dwelling units.

Pamphlet means the EPA pamphlet developed under section 406(a) of TSCA for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): the removal or modification of painted surfaces or painted

components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

Renovator means any person who performs for compensation a renovation.

§ 745.84 Confidential business information.

(a) Those who assert a confidentiality claim for submitted information must provide EPA with two copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential. EPA will place the second copy of the submission in the public file.

(b) EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

§ 745.85 Information distribution requirements.

(a) *Renovations in dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the renovator shall:

(1) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) In addition to the requirements in paragraph (a)(1) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the

signature of the renovator, and the date of signature.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) *Renovations in common areas.* No more than 60 days before beginning renovation activities in common areas of multi-family housing, the renovator shall:

(1) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the renovator.

(3) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the renovator shall provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the renovator initiates work beyond that which was described in the original notice.

(c) *Written acknowledgment.* Sample language for such acknowledgments is provided in § 745.88. The written acknowledgments required in paragraphs (a)(1)(i), (a)(2)(i), and (b)(1)(i) of this section shall:

(1) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) Be either a separate sheet or part of any written contract or service agreement for the renovation.

(3) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

§ 745.86 Recordkeeping requirements.

(a) Renovators shall retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation activities in target housing. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

(1) Reports certifying that a determination had been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program) that lead-based paint is not present in the area affected by the renovation, as described in § 745.82(b)(vi).

(2) Signed and dated acknowledgments of receipt as described in § 745.85(a)(1)(i), (a)(2)(i), and (b)(1)(i).

(3) Certifications of attempted delivery as described in § 745.85(a)(2)(i).

(4) Certificates of mailing as described in § 745.85(a)(1)(ii), (a)(2)(ii), and (b)(1)(ii).

(5) Records of notification activities performed regarding common area renovations, as described in § 745.85(b)(3) and (4).

§ 745.87 Enforcement and inspections.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).

(c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).

(d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

(e) EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.88 Acknowledgment and certification statements.

(a)(1) *Acknowledgment statement.* As required under § 745.85(c)(1),

acknowledgments shall include a statement of receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) *Sample acknowledgment language.* The following is a sample of language that could be used for such acknowledgments:
I have received a copy of the pamphlet, *Protect Your Family From Lead In Your Home*, informing me of the potential risk of lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

Printed Name and Signature

Date

Unit Address

(b)(1) *Certification of attempted delivery.* When an occupant is

unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the renovator is permitted (per § 745.85(a)(2)(i)) to certify delivery for each instance. The certification shall include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g. occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.

(2) *Sample certification language.* The following is a sample of language that could be used under those circumstances:

(i) *Unavailable for signature.*

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

Printed Name and Signature

Date

Unit Address

Attempted delivery dates and times:
(ii) *Refusal to sign.*

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below, and that the occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

Printed Name and Signature

Date

Unit Address

Attempted delivery dates and times:

[FR Doc. 98-14437 Filed 5-29-98; 8:45 am]

BILLING CODE 6560-60-F



[FR Doc. 04-7979 Filed 4-7-04; 8:45 am]
BILLING CODE 6560-50-9

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPT-2003-0061; FRL-7341-5]

RIN 2070-AD31

Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the authority of section 407 of the Toxic Substances Control Act (TSCA), as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as "Title X (ten)," EPA is issuing this final rule to establish notification procedures for certified lead abatement professionals conducting lead-based paint abatement activities, and accredited training programs providing lead-based paint activities courses. Specifically, this rule establishes the procedures that must be used to provide notification to EPA prior to the commencement of lead-based paint abatement activities. This rule also establishes provisions that require accredited training programs to notify EPA under the following conditions: Prior to providing initial or refresher lead-based paint activities training courses; and following completion of lead-based paint activities training courses. These notification requirements are necessary to provide EPA compliance monitoring and enforcement personnel with information necessary to track lead-based paint abatement and training activities, and to prioritize compliance inspections. This rule will help to prevent lead poisoning in children under the age of 6 by supporting EPA's implementation of the mandate in Title X to ensure that lead professionals involved in inspecting, assessing or removing lead-based paint, dust or soil are trained and certified to conduct these activities. This rule applies only in States and Tribal areas that do not have authorized programs pursuant to 40 CFR 745.324.

DATES: This final rule is effective on May 10, 2004.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mike Wilson, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566-0521; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are a firm which must be certified to conduct lead-based paint abatement activities in accordance with 40 CFR 745.226. Specifically, the procedure for notification of the commencement of lead-based paint abatement activities applies to the certified firm conducting lead-based paint abatement activities. The procedure for notification of lead-based paint activities training courses applies to the training manager of an accredited training program. This rule applies only in States and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States and Indian Tribes contact the National Lead Information Center (NLIC) at 1-800-424-LEAD(5323). Potentially affected categories and entities may include, but are not limited to:

- Lead abatement professionals (NAICS 562910); firms and supervisors engaged in lead-based paint activities
- Training programs (NAICS 611519); training programs providing training services in lead-based paint activities

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR part 745. If you have any questions regarding the applicability of this action to a particular entity, consult the

technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. **Docket.** EPA has established an official public docket for this action under docket identification (ID) number OPPT-2003-0061 (legacy number OPPT-82165). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. **Electronic access.** You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register-Environmental Documents." You can also go directly to the Federal Register listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 745 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_40/40cfr745_00.html, a beta site currently under development. To access information about lead-based paint and the Lead Program, go directly to the Home Page at <http://www.epa.gov/lead>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available

docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Introduction

A. What is the Agency's Authority for Taking this Action?

EPA is issuing this final rule under the authority of TSCA section 407, 15 U.S.C. 2687. Section 407 states that regulations of the Administrator under Subchapter IV of TSCA shall include such recordkeeping and reporting requirements as may be necessary to ensure effective implementation. EPA regulations under Subchapter IV of TSCA include lead-based paint activities regulations, which this final rule amends, codified at 40 CFR part 745, subpart L.

B. Why is the Agency Taking this Action?

The requirements in this final rule provide EPA compliance monitoring and enforcement personnel with information necessary to track lead-based paint abatement and training activities, and to prioritize compliance inspections. The objective of the rule is to ensure that a workforce of qualified and properly trained firms and individuals can assist in the elimination of hazards associated with lead-based paint. Providing a quality workforce of this type will ensure that individuals and firms will conduct lead-based paint activities in a way that safeguards the environment and protects human health, specifically, the health of building occupants (especially children under 6 years of age) and the workers themselves.

C. How Does this Action Fit into EPA's Overall Lead Program?

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. Several sections of Title X directed EPA to promulgate regulations aimed at fulfilling the purposes of Title X. These include TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and the establishment of standards for conducting lead-based paint activities. TSCA section 404 requires that EPA establish procedures for States seeking to establish their own programs for lead-based paint activities. On August 29, 1996, EPA promulgated a final rule under TSCA sections 402 and 404 titled

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities (61 FR 45778). The rule is codified at 40 CFR part 745, subparts L and Q.

One of the standards EPA developed for performing lead-based paint activities, codified at 40 CFR 745.227(e)(4), requires notification to EPA prior to the commencement of lead-based paint abatement activities in a residential dwelling, or child-occupied facility, or as a result of a Federal, State, Tribal, or local order. However, 40 CFR 745.227(e)(4) did not detail specific notification procedures. This final rule includes such procedures.

This final rule also requires training programs accredited under 40 CFR 745.225 to notify EPA prior to providing initial and refresher lead-based paint activities courses and to provide certain information after the completion of a training course. Currently, accredited training programs are asked to voluntarily notify EPA prior to offering a lead-based paint activities course. To provide consistency in this reporting, this final rule clearly defines the information needed by the Agency and when it must be provided.

The notification requirements for lead-based paint abatement activities and training courses in this final rule will assist significantly in the implementation and enforcement of lead-based paint activities regulations codified at 40 CFR part 745, subpart L. The notification provisions will help to assure compliance by facilitating observation of abatement activities and training by EPA compliance monitoring and enforcement personnel.

D. Summary of Proposed Rule and Public Comments

On January 22, 2001, EPA issued a proposed rule (66 FR 7208) (FRL-6764-7) seeking to establish notification procedures, in those States and Federally recognized Tribal jurisdictions without authorized programs, for certified lead abatement professionals conducting lead-based paint abatement activities, and accredited training programs providing lead-based paint activities courses. Specifically, the proposal introduced procedures for providing notification to EPA prior to the commencement of lead-based paint abatement activities. The proposal also introduced provisions which would require accredited training programs to notify EPA under the following conditions: (1) Prior to providing lead-based paint activities training courses; and (2) following

completion of lead-based paint activities training courses.

In response to the proposal, EPA received 11 comments. The largest number of responses was received from trainers and public educators (5 of the responses). Other commenters included government agencies (2 of the responses), a representative of a municipality, and a national organization representing demolition contractors. A summary of all comments received, and EPA's responses, may be found in the Response to Comments document which is available for public review in the TSCA Docket for this rulemaking (see Unit I.B.).

The majority of the comments raised concerns regarding the time periods allotted for notification of both lead-based paint abatement activities and associated training. Specific areas of concern included: (1) Time period for initial notification; (2) time period for notification of delayed start date; (3) time period for notification of cancellation or other significant changes; (4) emergency notification requirements; (5) which businesses must provide notification and who must sign the notification; and (6) purpose and use of information collected. Major comments are discussed in Unit III., and remaining comments are discussed in the Response to Comments document.

III. Final Rule Provisions

A. What are the Requirements for Notification of Lead-based Paint Abatement Activities?

This final rule requires firms certified under 40 CFR 745.226 to provide notification to the Agency prior to conducting lead-based paint abatement activities. The original notice must be received by the Agency at least 5 business days prior to the start of lead-based paint abatement activities. An abbreviated notification period is provided for lead-based paint abatement activities conducted in response to an elevated blood lead level (EBL) determination and/or a Federal, State, Tribal, or local emergency abatement order, where the firm is unable to comply with the standard notification period due to the necessity for an expeditious response to such event. If lead-based paint abatement activities are expected to begin on a date other than that specified in the original notice or if the other reported information changes, an updated notice is required. The notice must include the following:

1. Notification type (original, updated, cancellation).
2. Date when lead-based paint abatement activities will start.

3. Date when lead-based paint abatement activities will end (approximation using best professional judgement).

4. Firm's name, EPA certification number, address, telephone number.

5. Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

6. Property name (if applicable).

7. Property address including apartment or unit number(s) (if applicable) for abatement work.

8. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period.

9. Name and EPA certification number of the project supervisor.

10. Approximate square footage/acreage to be abated.

11. Brief description of abatement activities to be performed.

12. Name, title, and signature of the representative of the certified firm who prepared the notification.

Notification must be accomplished using any of the following methods: written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification can be accomplished using either the sample form titled *Notification of Lead-Based Paint Abatement Activities* or similar form containing the required information. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery.

B. What are the Requirements for Notification of Lead-based Paint Activities Training?

This final rule requires training programs accredited under 40 CFR 745.225 to provide notification to the Agency prior to conducting lead-based paint activities courses. The original notice must be received by the Agency at least 7 business days prior to the start of a lead-based paint activities course. An updated notice is required if the starting date for a lead-based paint activities course is changed to a date other than that specified in the original notice or if the other reported information changes. The notice must include the following:

1. Notification type (original, update, cancellation).

2. Training program name, EPA accreditation number, address, and telephone number.

3. Course discipline, type (initial/ refresher), and the language in which instruction will be given.

4. Date(s) and time(s) of training.

5. Training location(s) telephone number, and address.

6. Principal instructor's name.

7. Training manager's name and signature.

Training programs must also provide notice to the Agency following completion of a lead-based paint activities course. This notice must be provided to the Agency within 10 business days of course completion. This notice must include the following:

1. Training program name, EPA accreditation number, address, and telephone number.

2. Course discipline and type (initial/ refresher).

3. Date(s) of training.

4. The following information for each student who took the course:

a. Name.

b. Address.

c. Date of birth.

d. Course completion certificate number.

e. Course test score.

f. Training manager's name and signature.

Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification of lead-based paint activities course schedules can be accomplished by using either the appropriate sample form provided by EPA or a similar form containing the required information. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery.

C. What Changes Were Made in the Final Rule?

In light of the public's comments, EPA has carefully reviewed the proposed rulemaking and has made certain modifications in the final rule. The following is a brief description of the most significant changes adopted in response to public comment on the proposal. Further information regarding comments received or EPA's response can be reviewed in the Response to Comments document available for public review in the public docket described in Unit I.B.1. With the exception of these and additional minor editorial changes, the final rule is as proposed on January 22, 2001. The following discussion describes the changes.

1. *Time period for initial abatement notification.* EPA received comments expressing concern that the proposed 10 business day initial notification may hamper some abatement processes, including the ability of lead abatement firms to respond quickly to work demands.

Upon review, EPA has modified the initial notification period. The final rule includes a 5 business day initial notification period for lead-based paint abatement activities. EPA believes that the 5 business day notification period adequately addresses the concerns of the commenters while providing EPA with enough time to enable enforcement and compliance assistance personnel to adequately oversee abatement activities. Specifically, a 5-day notification period provides EPA sufficient time to perform activities such as processing the notification, making a determination of whether a compliance inspection is needed, preparing a travel authorization, providing a pre-inspection notification, performing a preliminary compliance review, and completing travel arrangements.

2. *Time period for notification of delayed start date.* EPA received comments regarding the proposed requirement that, if the project start date was to be delayed, notification would be provided to EPA 2 business days prior to the original start date. A commenter pointed out that it would be impossible to provide notification to EPA 2 business days prior to the original start date if issues regarding commencement of work arose on the day that work begins (e.g., lack of access to the work site).

EPA agrees that circumstances can arise on the project start date which delay work. Therefore, the final rule requires that notification of delayed lead-based paint abatement start dates be received by EPA on or before the original start date.

3. *Time period for notification of cancellation or other significant changes.* EPA received comments regarding the proposed requirement that, where abatement activities are canceled or other significant changes occur, EPA be notified 2 business days prior to the original start date. The commenters pointed out that it is impossible to update EPA regarding significant changes to the abatement project 2 days before the start date when the changes occur during the project.

Upon further review EPA agrees that providing cancellation or updated information 2 business days prior to the original start date in some cases could prove impossible. Therefore, the final regulation requires that notification of cancellation of lead-based paint activities be received by EPA on or before the original start date. In addition, any other required information updates must be received by EPA on or before the original start date, and where work has begun, within 24 hours of the change.

4. *Certified supervisor's signature on the notification.* A commenter asked why a certified supervisor must sign an abatement notification.

EPA has an interest in verifying that the project will be overseen by a certified supervisor as required by the regulation; however, on re-examination in light of the commenter's question, EPA believes that the notification itself need not be signed by a certified supervisor. EPA has modified the requirement in the final rule to indicate that a representative of the firm may sign the notification document. EPA also added a requirement that the name and certification number of the supervisor overseeing the project be included in the notification.

5. *Time period for initial training notification.* EPA received a comment regarding the time period for initial training notification. The commenter expressed concern that a 10 business day notification could hamper the ability of firms and individuals in the lead-based paint abatement field to obtain training quickly.

EPA is concerned that the proposed 10 business day notification period could prevent individuals from obtaining timely lead-based paint activities training. The final rule is modified to include a 7 business day initial notification period for lead-based paint activities training. This notification period provides EPA time to perform activities such as: Processing the notification, making a determination of whether a compliance inspection is needed, preparing a travel authorization, providing a pre-inspection notification, performing a preliminary compliance review, and completing travel arrangements. This notification period differs from abatement because compliance personnel often observe training in its entirety which necessitates an early arrival, whereas they will routinely monitor only a portion of an abatement project.

6. *Student information.* EPA received a comment that a student's date of birth should be provided to EPA following training rather than their social security number. The commenter stated that trainees are often reluctant to provide valid social security numbers, and believes that a date of birth would be as reliable an indicator of the student's identity as their social security number.

EPA agrees that a student's date of birth in conjunction with other required information is a reliable indicator of the student's identity. Therefore, the final regulation eliminates the requirement that training programs provide student's social security numbers and instead

requires that a student's date of birth be reported.

7. *Requirement to follow e-mail notification with written notification.* EPA received comments regarding the requirement to follow e-mail notification with written notification. The commenters indicated that e-mail notification should be sufficient, and that a follow-up written notification would be redundant and increase the paperwork burden of both government and industry.

EPA plans to use its Central Data Exchange (CDX) to receive electronic notification submitted to satisfy the requirements of this regulation. One of the basic purposes of the CDX system is to provide a method of electronic signature verification, which eliminates the need for a follow-up written notification after an e-mail notification is provided. Therefore, where a submission is provided electronically via the Agency's CDX system, follow-up written notice is not required.

8. *Ability to use other forms if information is the same.* EPA received comments regarding the use of forms, other than the sample forms developed by EPA, containing the information specified in the proposal. Both commenters suggest EPA minimize respondent burden by allowing the use of other forms as long as they provide the same information required under the EPA rule.

EPA agrees that allowing alternative forms can reduce respondent burden and agrees that other forms should be allowed to be used if they contain the information required by EPA. The final rule allows the use of alternative forms that contain the information required by EPA.

9. *Terminology.* EPA received a comment that the use of the terms "project start date" and "original start date" were confusing.

EPA agreed and introduced new terms and definitions for "start date" and "start date provided to EPA" which clarify these requirements. In addition, EPA removed the definition of "lead abatement professional" because the term was not introduced in the regulatory text.

D. How Do I Obtain Notification Instructions and Sample Forms?

Instructions and sample forms can be obtained from the National Lead Information Center at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this final rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, because this action does not meet any of the criteria for a "significant regulatory action" under section 3(f) of Executive Order 12866.

The costs for the first year of implementation are estimated to be approximately \$440,000, decreasing to an average annual estimated cost of approximately \$395,000 in subsequent years. For additional information about these estimated costs, please refer to the document titled *Information Collection Request (ICR) Supporting Statement for a Proposed Addendum to EPA ICR No. 1715 titled TSCA §402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities* (hereinafter the ICR Addendum (EPA ICR No. 1715.03)). This document, identified as EPA ICR No. 1715.03, is an addendum to the existing ICR. A copy is available in the public docket described in Unit I.B.1.

B. Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2070-0155. A copy of the Information Collection Request (ICR) document (EPA ICR No. 1715.05) has been placed in the public docket described in Unit I.B.1.

The information requirements contained in this rule are not effective until promulgation and OMB approval, which is represented by a currently valid OMB control number. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after initial publication in the *Federal Register* and inclusion on the collection instruments, are maintained in a list at 40 CFR part 9.

The final rule contains the following information collection requirements subject to the PRA that impose paperwork burdens: (1) Reading and interpreting the final rule; (2) the notification of lead-based paint

abatement activities; (3) the notification of lead-based paint activities training courses; and (4) the notification following completion of lead-based paint activities training courses. The total paperwork burdens are estimated to be 21,254 total hours for the first year of implementation, and 19,048 hours annually in subsequent years.

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), EPA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for EPA's determination, which is summarized here, is based on the small entity impact analysis prepared as part of the Regulatory Impact Analysis (RIA) for the 1996 Lead Abatement Training and Certification Final Rule (61 FR 45778). EPA assessed the potential small entity impacts of the notification requirement that was contained in the 1996 final rule as part of the economic analysis that was prepared for that rulemaking, a copy of which is available in the public docket described in Unit I.B.1. In addition, EPA has estimated the impacts of the procedural requirements contained in this rule, which are presented in the ICR Addendum (EPA ICR No. 1715.03).

In considering the potential small entity impacts of this final rule, EPA believes that its previous determination regarding the Lead Abatement Training and Certification Final Rule is not affected by the notification procedures contained in this final rule. Based on the estimated total costs of this final rule as presented in the ICR Addendum (EPA ICR No. 1715.03), EPA has determined that this rulemaking is not likely to result in a significant economic impact on a substantial number of small

entities. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and EPA.

For the purpose of analyzing the potential impacts of this final rule on small entities, EPA used the definition for small entities that is found in section 601 of the RFA. Under section 601, "small entity" is defined as: (1) A small business that meets Small Business Administration (SBA) size standards codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The SBA size standards for the small businesses potentially affected by this final rule is 500 employees or less for lead abatement firms whose primary activity is classified as environmental remediation (NAICS code 562910), and revenues of \$5 million or less for firms that are accredited to provide lead-based paint training (NAICS code 611519).

This rule only applies in those States and Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies if that State or Tribe chooses to seek certification to perform lead abatement activities or accreditation to provide lead training. As such, small governmental jurisdictions are only impacted if there is not a State or Tribe authorized program and then only if the small governmental entity chooses to seek certification to perform lead abatement activities or accreditation to provide lead training on their own. To estimate potential impacts on small governments, EPA estimated that in the first year of implementation there could be approximately 15.36 abatement notifications per firm and 17.93 training provider notifications per provider. In subsequent years, the number of training provider notifications are expected to decrease to four each year per provider.

Small businesses are only impacted if there is not a State or Tribe authorized program in their State, and then only if they seek certification to perform lead abatement activities or accreditation to provide lead training. EPA estimates that there could be approximately 15.36 notifications per firm each year, and approximately 4,000 firms.

The estimated average cost per notification for abatement firms is approximately \$5, with an estimated

total cost per entity of approximately \$75 annually. The estimated average cost per notification for training providers is approximately \$32, with an estimated total cost per entity of approximately \$298 in the first year and approximately \$67 in subsequent years. EPA believes that the impact of these costs would be proportional for both small and large firms, and that the impacts may be slightly lower for small governmental jurisdictions that seek EPA certification as an abatement firm or EPA accreditation as a training provider due to lower wage rates and overhead expenses. Overall, EPA believes that these costs would not result in a significant economic impact on affected small entities.

Small non-profit organizations are only impacted if they seek certification to perform lead abatement activities or accreditation to provide lead training on their own. Although EPA believes that non-profit organizations may seek certification, EPA does not have sufficient information about these organizations or their intentions regarding certification or accreditation. Nevertheless, given the low costs for notification and the relatively small number of non-profit organizations, EPA does not believe that this affects EPA's determination that this rule is not expected to have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law No. 104-4), EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. This final rule applies only in States and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those States and Indian Tribes who choose to seek certification to perform lead abatement activities or accreditation to provide lead training. As such, the rule will not impose an enforceable duty on any State, local or Tribal governments. Since, this final rule is estimated to cost approximately \$439,573 in the first year of implementation, and \$395,157 annually in subsequent years, it is not expected to result in expenditures by the private sector of \$100 million or more in any given year. As a result, the UMRA requirements in sections 202, 204, and 205 do not apply to this final rule.

This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, no action is needed under section 203 of the UMRA.

E. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications, because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule applies only in States that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those States who choose to seek certification to perform lead abatement activities or accreditation to provide lead training.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with the States at meetings of the Forum on State and Tribal Toxics Action and the annual EPA meeting with State Lead Program representatives.

F. Executive Order 13175

This rule does not significantly or uniquely affect the communities of Indian tribal governments, because this final rule applies only in Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those Indian Tribes who choose to seek certification to perform lead abatement activities or accreditation to provide lead training. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27675, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking,

however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 13175 do not apply to this rule either.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that (1) is economically significant as defined under OMB's guidance related to section 3(f)(1) of Executive Order 12866, and (2) addresses an environmental health or safety risk that EPA has reason to believe has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This rule is not subject to Executive Order 13045 because it is not an "economically significant regulatory action" as defined by Executive Order 12866 (see Unit IV.A.). Although this final rule is associated with EPA's overall lead-based paint management program which is designed to reduce health risks to children, this rule itself simply establishes an Agency notification procedure and does not directly address environmental health or safety risk. This final rule does, however, help to further EPA's efforts to prevent lead poisoning in children under the age of 6 by supporting EPA's implementation of the mandate in Title X, which requires that lead professionals involved in inspecting, assessing or removing lead-based paint, dust or soil be trained and certified to conduct these activities.

H. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards. EPA invites comment on the potential use of voluntary consensus standards in this rulemaking, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

J. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. EPA's analysis has determined that this final action has no disproportionate impact on minority or low-income populations.

K. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

L. Executive Order 12988

In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides

that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Fees, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: March 31, 2004.

Michael O. Leavitt,
Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 745—[AMENDED]

- 1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2615, 2681–2692, and 42 U.S.C. 4852d.

- 2. Section 745.223 is amended by alphabetically adding the following definitions to read as follows:

§ 745.223 Definitions.

Business day means Monday through Friday with the exception of Federal holidays.

Lead-based paint activities courses means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

Start date means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

Start date provided to EPA means the start date included in the original notification or the most recent start date provided to EPA in an updated notification.

Training provider means any organization or entity accredited under § 745.225 to offer lead-based paint activities courses.

- 3. Section 745.225 is amended by adding paragraphs (c)(13) and (c)(14) and revising paragraph (e)(5)(vi) to read as follows:

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

(c) * * *

(13) The training manager must provide notification of lead-based paint activities courses offered.

(i) The training manager must provide EPA with notification of all lead-based paint activities courses offered. The original notification must be received by EPA at least 7 business days prior to the start date of any lead-based paint activities course.

(ii) The training manager must provide EPA updated notification when lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint activities courses beginning prior to the start date provided to EPA, an updated notification must be received by EPA at least 7 business days before the new start date.

(B) For lead-based paint activities courses beginning after the start date provided to EPA, an updated notification must be received by EPA at least 2 business days before the start date provided to EPA.

(iii) The training manager must update EPA of any change in location of lead-based paint activities courses at least 7 business days prior to the start date provided to EPA.

(iv) The training manager must update EPA regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by EPA at least 2 business days prior to the start date provided to EPA.

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, cancellation).

(B) Training program name, EPA accreditation number, address, and telephone number.

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(D) Date(s) and time(s) of training.

(E) Training location(s) telephone number, and address.

(F) Principal instructor's name.

(G) Training manager's name and signature.

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification of lead-based paint activities course schedules can be accomplished by using either the

sample form titled "Lead-Based Paint Activities Training Course Schedule" or a similar form containing the information required in paragraph (c)(13)(v) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>.

(vii) Lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(viii) No training program shall provide lead-based paint activities courses without first notifying EPA of such activities in accordance with the requirements of this paragraph.

(14) The training manager must provide notification following completion of lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.

(ii) The notification must include the following:

(A) Training program name, EPA accreditation number, address, and telephone number.

(B) Course discipline and type (initial/refresher).

(C) Date(s) of training.

(D) The following information for each student who took the course:

(1) Name.

(2) Address.

(3) Date of birth.

(4) Course completion certificate number.

(5) Course test score.

(6) Training manager's name and signature.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Follow-up"

or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>.

(e) * * *

(5) * * *

(vi) The requirements in paragraphs (c)(1) through (c)(5), and (c)(7) through (c)(14) of this section apply to refresher training providers.

* * *

■ 4. Section 745.227 is amended by revising paragraph (e)(4) to read as follows:

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

(e) * * *

(4) A certified firm must notify EPA of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (e)(4)(ii) of this section, EPA must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by EPA at least 5 business days before the start date of any lead-based paint abatement activities.

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, Tribal, or local emergency abatement order should be received by EPA as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to EPA change, an updated notification must be received by EPA on or before the start date provided to EPA. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period.

(iii) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for lead-based paint abatement activities that will begin on a date other than the

start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to EPA an updated notification must be received by EPA at least 5 business days before the new start date included in the notification.

(B) For lead-based paint abatement activities beginning after the start date provided to EPA an updated notification must be received by EPA on or before the start date provided to EPA.

(iv) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to EPA.

(v) Updated notification must be provided to EPA when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by EPA on or before the start date provided to EPA, or if work has already begun, within 24 hours of the change.

(vi) The following must be included in each notification:

(A) Notification type (original, updated, cancellation).

(B) Date when lead-based paint abatement activities will start.

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment).

(D) Firm's name, EPA certification number, address, telephone number.

(E) Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(F) Property name (if applicable).

(G) Property address including apartment or unit number(s) (if applicable) for abatement work.

(H) Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (e)(4)(ii) of this section.

(I) Name and EPA certification number of the project supervisor.

(J) Approximate square footage/acreage to be abated.

(K) Brief description of abatement activities to be performed.

(L) Name, title, and signature of the representative of the certified firm who prepared the notification.

(vii) Notification must be accomplished using any of the following methods: Written notification, or

electronically using the Agency's Central Data Exchange (CDX). Written notification can be accomplished using either the sample form titled "Notification of Lead-Based Paint Abatement Activities" or similar form containing the information required in paragraph (e)(4)(vi) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>.

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification.

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying EPA of such activities according to the requirements of this paragraph.

* * *

[FR Doc. 04-7980 Filed 4-7-04; 8:45 am]
BILLING CODE 6880-60-8

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004-17471]

Federal Motor Vehicle Safety Standards; Rearview Mirrors Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correcting amendment.

SUMMARY: On March 27, 1995, the National Highway Traffic Safety Administration (NHTSA) published a final rule amending the field of view requirements for System A mirrors on school buses, such that those mirrors will no longer be required to provide a view of the ground forward of the rear wheels (50 FR 15690). Previously, System A mirrors were required to provide a view of the area beneath those mirrors, a view that overlapped with the vehicle's System B mirrors, which are also required. The effective date of the amendment was April 26, 1995.

ETHICS AND DISCLOSURE

**OFFICE OF THE ATTORNEY GENERAL
MEMORANDUM**

TO: Utah Air Quality Board
Utah Water Quality Board
Utah Drinking Water Board
Utah Solid and Hazardous Waste Control Board
Utah Radiation Control Board

FROM: Fred Nelson
Assistant Attorney General

DATE: April 6, 2005

RE: **Ethics Act and Conflicts of Interest**

This memo is to provide information on ethics requirements and potential or actual conflicts of interest of members of the Board.

As you are aware, pursuant to Utah Code Annotated (UCA), Title 19, the Boards are comprised of members who by statute are representatives of various interests and groups. These statutorily-established criteria for membership on the Boards make conflicts of interest inevitable.

Applicable Law

By amendments in 1989 to the Utah Public Officers' and Employees' Ethics Act (Ethics Act) (copy attached), Board members are now covered by its various provisions. The definition of "public officer" means "all elected or appointed officers of the state . . . who occupy policy-making posts." Board members are appointed and determine state policy under their respective statutory powers. Prior to 1989, Board members were considered specifically by statute as "special employees" who were excluded from the requirements of the Ethics Act. The 1989 amendments deleted the exclusion.

In addition to the generally applicable Ethics Act, for members of the Air Quality Board, there is a specific statutory provision (UCA § 19-2-103) which requires that "[a]ny potential conflict of interest of any member or the executive secretary, relevant to the interests of the Board, shall be adequately disclosed."

In 1998 the Legislature amended the Ethics Act by clarifying that the offenses covered by this Act do not encompass actions taken under circumstances amounting to a violation of UCA § 63-56-72 or § 76-8-105. UCA § 63-56-72 makes it a felony for any person who in any official capacity participates in the procurement of any supplies, services, construction, real

property, or insurance for the state of Utah or any subdivision thereof if that person asks, receives, or offers to receive, from any person interested in the sale of these items or services, any emolument, gratuity, contribution, loan, reward, or any promise thereof, either for himself or for another person or organization.

In the 2000 General Session, the Legislature added provisions making it an offense to donate or to demand donations of property, money or services on a condition of granting a permit, approval, or other authorization. UCA §§ 67-16-5.3 and 5.6.

Under UCA § 76-8-105, a public servant is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly, any benefit with the understanding that the purpose is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion. It is not a defense that the public servant was not qualified to act in the desired way, did not act in the desired way, or the benefit is not asked for, conferred, solicited, or accepted until after the public servant has performed the desired action or ceases to be a public servant.

Requirements of the Ethics Act

A. Disclosure

Under § 67-16-7 of the Ethics Act, every public officer who is an officer, director, agent, employee, or the owner of a substantial interest in any business entity which is subject to the regulation of the agency is required to disclose:

1. the position held; and
2. the precise nature and value of interest. (Does not apply where total value does not exceed \$2,000. Life insurance policies and annuities are not considered in determining value.)

If the position changes or value is significantly increased, it must be reported.

Under § 67-16-6, a public officer may not receive or agree to receive compensation for assisting any person or business in any transaction involving any agency unless the public officer discloses the name and address of the public officer and the agencies involved, and provides a brief description of the transaction.

Under § 67-16-8, a public officer may not participate or receive compensation in respect to any transaction between the state and any business entity to which the public officer is also an

officer, director or employee or owns a substantial interest, unless disclosure is made as indicated below.

B. Method of Disclosure

A sworn, written statement by the public officer giving the information listed above is to be filed with the head of the agencies involved and the Utah Attorney General's Office (see attached form/outline).

C. Prohibitions

Restrictions outlined in the Ethics Act include:

No public officer shall:

1. accept employment or engage in any business or professional activity that he may reasonably expect would require or induce him to improperly disclose controlled information;
2. improperly disclose or use controlled, private or protected information acquired by reason of his position or in the course of official duties to further substantially his personal economic interest or obtain special privileges or exemptions for himself or others;
3. use or attempt to use his position to further substantially his personal economic interest or to secure special privileges or exemptions for himself or others;
4. accept employment that would impair his independence of judgment or interfere with the ethical performance of his public duties;
5. receive, take, seek, or solicit, directly or indirectly, for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift,¹

¹ "Economic benefit tantamount to a gift" includes:

- (1) a loan at an interest rate that is substantially lower than the commercial rate for similar loans; and
- (2) substantially higher compensation received for private services than the fair market value of those services.

- a. that would tend to improperly influence him in the discharge of his duties,
 - b. that the person knows or a reasonable person in that position should know under the circumstances is primarily to reward the person for official action taken,
 - c. if he recently has been or is or will be involved in a government action affecting the donor or lender unless a disclosure of the gift, compensation, or loan has been made in the manner described above; or
6. have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.
 7. donate or to demand donations of property, money or services on a condition of granting a permit, approval or other authorization.

Conflicts of Interest

A. Discussion - Procedure

In the past, different approaches have been taken by various members of the environmental boards when they have had conflicts of interest. These approaches have included:

1. oral disclosure of the conflict before discussion and then participating in the discussion but not the vote;
2. oral disclosure of the conflict at the beginning of the discussion with no participation in discussion or the vote; or
3. oral disclosure of the conflict and physically withdrawing from the meeting when an action is being discussed and voted upon.

The approach taken by the Board member with a conflict of interest is an individual decision. While no specific law exists mandating how conflicts of interest should be resolved, the Board could establish a policy recommending how conflicts of interest should be handled.

Excluded from this definition is an occasional nonpecuniary gift of a value less than \$50.00, an award publicly presented in recognition of public service, any bona fide loan made in the ordinary course of business, or a political campaign contribution.

While that policy may not be binding on a Board member, it would reflect the Board's attitude as to the best way to handle action items where there is a potential conflict of interest. Some Boards have established policies on handling conflicts of interest.

B. What is a conflict of interest?

One question which often arises is what constitutes a potential conflict of interest. It is generally considered that a potential conflict of interest is any direct and immediate interest or relationship, including financial interest, with persons or businesses regulated by or directly affected by decisions of the Board, or persons or organizations which may present requests or issues before the Board. The interest of a spouse or other members of the immediate family/household or the interest of any other person which is constructively controlled by the member is included.

It is recognized that some relationships and interests have more "potential" for being a conflict of interest than others. There are some interests and relationships which because of their nature are so "de minimus" as to be insignificant. The financial interest may be so small or the relationship so remote that it does not present an actual conflict.

Types of interests to be considered as potential conflicts of interest include relationships or interests with persons, business enterprises, or nonprofit, professional, charitable, religious, social, educational, recreational, environmental, public service, or civic organizations,

1. with which you are connected as a member, employee, officer, owner, director, trustee, partner, advisor, or consultant;
2. in which you have any continuing financial interest as a creditor or through ownership of stocks, bonds, or other securities, ownership of real property or rights in lands, or through a pension or retirement plan, shared income or otherwise; or
3. to which you are indebted financially.



DISCLOSURE STATEMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Pursuant to Utah Public Officers' and Employees' Ethics Act,
Utah Code Ann. §§ 67-16-1 through -14.

I, _____, being first sworn, hereby disclose as follows:

1. I reside at _____

2. I was appointed as a member of the _____
Board on _____

3. I am an officer, director, agent, employee, or owner of a substantial interest in the following business entities which are subject to regulation by the Board or the Department of Environmental Quality ("Department"):

a. Name of business entity: _____

b. Position held: _____

c. Nature and value of interest: _____

NOTE: This disclosure requirement does not apply to instances where the total value of the interest does not exceed \$2,000. Life insurance policies and annuities shall not be considered in determining the value of any such interest. This statement is to be filed on first becoming a public officer, and again if the position or value of interest in the business entity significantly changes. It is filed with the head of the agency with which the officer is affiliated and the Attorney General.

4. I have solicited, received or have agreed to receive, for myself or another, compensation, loans or gifts, directly or indirectly, from the following persons or business entities who in the recent past, now or in the near future, may be subject to Board or Department action:

a. Name of person or business entity providing compensation, loans, or gifts _____

b. Brief description of gift, loan, or compensation transaction and the action by the Board that may affect the person or business entity _____

NOTE: This disclosure requirement does not apply to an occasional nonpecuniary gift of a value less than \$50.00, a public award of recognition for public service, bona fide loans from commercial lenders, or political contributions.

5. I have participated in or received or have agreed to receive compensation 1) in respect to a transaction between state agencies and a business entity as to which I am an officer, director, or employee, or own a substantial interest, or 2) for assisting persons or business entities in transactions involving state agencies, as follows:

a. Name of Agency: _____

b. Name of person or business entity involved: _____

c. Brief description of the transaction and nature of service performed or to be performed _____

NOTE: This disclosure statement is required to be filed for each transaction or continuing transactions with an agency. It should be filed with the head of the agency with which the transaction is being conducted and with the Attorney General, within ten days after the date of any agreement or receipt of compensation, whichever is first.

DATED this ____ day of _____, 2005.

Signature

SUBSCRIBED and SWORN to before me this ____ day of _____, 2005.

Notary Public

Residing at: _____

My Commission Expires:



UTAH PUBLIC OFFICERS' AND EMPLOYEES' ETHICS ACT
[Current through the 2005 General Legislative Session]

- 67-16-1 Short title.
- 67-16-2 Purpose of chapter.
- 67-16-3 Definitions.
- 67-16-4 Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment which would impair independence of judgment or ethical performance -- Exceptions.
- 67-16-5 Accepting gift, compensation, or loan -- When prohibited.
- 67-16-5.3 Requiring donation, payment, or service to government agency in exchange for approval -- When prohibited.
- 67-16-5.6 Offering donation, payment, or service to government agency in exchange for approval -- When prohibited.
- 67-16-6 Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.
- 67-16-7 Disclosure of substantial interest in regulated business.
- 67-16-8 Participation in transaction involving business as to which public officer or employee has interest -- Exceptions.
- 67-16-9 Conflict of interests prohibited.
- 67-16-10 Inducing others to violate chapter.
- 67-16-11 Applicability of provisions.
- 67-16-12 Penalties for violation -- Removal from office or dismissal from employment.
- 67-16-14 Unethical transactions -- Duty to dismiss officer or employee -- Right to rescind or void contract.

67-16-1 Short title.

This chapter is known as the "Utah Public Officers' and Employees' Ethics Act."

939 P.2d 1192 (Utah 1997) (reversing *V-1 Oil Co. v. Department of Envtl. Quality*, 893 P.2d 1093 (Utah App. 1995)).

67-16-2 Purpose of chapter.

The purpose of this chapter is to set forth standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests. In this manner the Legislature intends to promote the public interest and strengthen the faith and confidence of the people of Utah in the integrity of their government. It does not intend to deny any public officer or employee the opportunities available to all other citizens of the state to acquire private economic or other interests so long as this does not interfere with his full and faithful discharge of his public duties.

Decisions

Segregation of presiding officer

Held that DERR accomplished an appropriate and sufficient separation of functions at the individual level by segregating the agency presiding officer from contact with the investigative and prosecutorial arm of DERR; created a workable scheme within the agency to prevent presiding officer from engaging in multiple functions likely to bias his work as an adjudicator, thus preventing violation of due process. *V-1 Oil Co. v. Department of Envtl. Quality*.

67-16-3 Definitions.

As used in this chapter:

- (1) "Agency" means any department, division, agency, commission, board, council, committee, authority, or any other institution of the state or any of its political subdivisions.
- (2) "Agency head" means the chief executive or administrative officer of any agency.
- (3) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business entity and with the intent to assist such person or business entity.
- (4) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
- (5) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in

consideration of personal services, materials, property, or any other thing whatsoever.

- (6) "Controlled, private, or protected information" means information classified as controlled, private, or protected in Title 63, Chapter 2, Government Records Access and Management Act, or other applicable provision of law.
- (7) "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including:
 - (a) any decision, determination, finding, ruling, or order; and
 - (b) any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.
- (8) "Improper disclosure" means disclosure of controlled, private, or protected information to any person who does not have the right to receive the information.
- (9) "Legislative employee" means any officer or employee of the Legislature, or any committee of the Legislature, who is appointed or employed to serve, either with or without compensation, for an aggregate of less than 800 hours during any period of 365 days. "Legislative employee" does not include legislators.
- (10) "Legislator" means a member or member-elect of either house of the Legislature of the state of Utah.
- (11) "Political subdivision" means a district, county, school district, or any other political subdivision of the state that is not an agency, but does not include municipalities.
- (12) "Public employee" means a person who is not a public officer who is employed on a full-time, part-time, or contract basis by the state or any of its political subdivisions. "Public employee" does not include legislators or legislative employees.
- (13) "Public officer" means all elected or appointed officers of the state or any of its political subdivisions who occupy policymaking posts. "Public officer" does not include legislators or legislative employees.
- (14) "State" means the state of Utah.
- (15) "Substantial interest" means the ownership, either legally or equitably, by an individual, his spouse, or his minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

67-16-4 Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment which would impair independence of judgment or ethical performance -- Exceptions.

- (1) Except as provided in Subsection (3), it is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section 63-56-1001 or 76-8-105, to:
 - (a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;
 - (b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;
 - (c) use or attempt to use his official position to:
 - (i) further substantially the officer's or employee's personal economic interest; or
 - (ii) secure special privileges or exemptions for himself or others;
 - (d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or
 - (e) accept other employment that he might expect would interfere with the ethical performance of his public duties.
- (2)(a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.
- (b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.
- (3) A county legislative body member who does not participate in the process of selecting a mental health or substance abuse service provider does not commit an offense under Subsection (1)(a) or (b) by:
 - (a) serving also as a member of the governing board of the provider of mental health or substance abuse services under contract with the county; or
 - (b) discharging, in good faith, the duties and responsibilities of each position.

Amended by ch. 276, § 2, 2000 General Session.

Amended by ch. 25, § 112, 2005 General Session (H.B. 19)

Amended by ch. 45, § 2, 2005 General Session (S.B. 90).

67-16-5 Accepting gift, compensation, or loan -- When prohibited.

- (1) As used in this section, "economic benefit tantamount to a gift" includes:
- (a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and
 - (b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.
- (2) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section 63-56-1001 or 76-8-105, to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of substantial value or a substantial economic benefit tantamount to a gift:
- (a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;
 - (b) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken; or
 - (c) if he recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.
- (3) Subsection (2) does not apply to:
- (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
 - (b) an award publicly presented in recognition of public services;
 - (c) any bona fide loan made in the ordinary course of business; or
 - (d) a political campaign contribution.

Amended by ch. 25, § 113, 2005 General Sessions (H.B. 19).

67-16-5.3. Requiring donation, payment, or service to government agency in exchange for

approval -- When prohibited.

- (1) It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section 63-56-1001 or 76-8-105, to demand from any person as a condition of granting any application or request for a permit, approval, or other authorization, that the person donate personal property, money, or services to any agency.
- (2)(a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:
- (i) expressly required by statute, ordinance, or agency rule;
 - (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
 - (iii) made voluntarily by the applicant; or
 - (iv) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.
- (b) If a person donates property, funds, or services to an agency, the agency shall, as part of the permit or other written authorization:
- (i) identify that a donation has been made;
 - (ii) describe the donation;
 - (iii) certify, in writing, that the donation was voluntary; and
 - (iv) place that information in its files.

Enacted by ch. 108, § 1, 2000 General Session.

Amended by ch. 25, § 114, 2005 General Sessions (H.B. 19).

Decisions

Extortion

In jury trial, former Director of Division of Radiation Control found not guilty on charges of extortion and mail fraud in relation to his private, undisclosed business arrangement with Khrosow Semnani, President of Envirocare of Utah, a low-level radioactive waste disposal facility seeking a license regulated by the Division. United States v. Anderson, Case No. 2:99-CR-00131-001C, U.S. District Court, District of Utah; Judgment entered Dec. 4, 2001.

Fraud

In jury trial, former Director of Division of Radiation Control found guilty on charges of tax evasion and filing false tax returns in relation to his private, undisclosed business arrangement with Khrosow Semnani, President of Envirocare of Utah, a low-level radioactive waste disposal facility seeking a license regulated by the Division.

67-16-5.6. Offering donation, payment, or service to government agency in exchange for approval -- When prohibited.

- (1) It is an offense for any person, under circumstances not amounting to a violation of Section 76-8-103, to donate or offer to donate personal property, money, or services to any agency on the condition that the agency or any other agency approve any application or request for a permit, approval, or other authorization.
- (2)(a) Subsection (1) does not apply to any donation of property, funds, or services to an agency that is:
 - (i) otherwise expressly required by statute, ordinance, or agency rule;
 - (ii) mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization;
 - (iii) a condition of a consent decree, settlement agreement, or other binding instrument entered into to resolve, in whole or in part, an actual or threatened agency enforcement action; or
 - (iv) made without condition.
- (b) The person making the donation of property, funds, or services shall include with the donation a signed written statement certifying that the donation is made without condition.
- (c) The agency receiving the donation shall place the signed written statement in its files.

Enacted by ch. 108, § 2, 2000 General Session.

67-16-6 Receiving compensation for assistance in transaction involving an agency -- Filing sworn statement.

- (1) It is an offense for a public officer or public employee, under circumstances not amounting to a violation of Section 63-56-1001 or 76-8-105, to receive or agree to receive compensation for assisting any person or business entity in any transaction involving an agency unless the public officer or public employee files a sworn, written statement containing the information required by Subsection (2) with:
 - (a) the head of his own agency;
 - (b) the agency head of the agency with which the transaction is being conducted; and
 - (c) the state attorney general.

- (2) The statement shall contain:
 - (a) the name and address of the public officer or public employee involved;
 - (b) the name of the public officer's or public employee's agency;
 - (c) the name and address of the person or business entity being or to be assisted; and
 - (d) a brief description of:
 - (i) the transaction as to which service is rendered or is to be rendered; and
 - (ii) the nature of the service performed or to be performed.
- (3) The statement required to be filed under Subsection (1) shall be filed within ten days after the date of any agreement between the public officer or public employee and the person or business entity being assisted or the receipt of compensation, whichever is earlier.
- (4) The statement is public information and shall be available for examination by the public.

Amended by ch. 25, § 115, 2005 General Sessions (H.B.19).

67-16-7 Disclosure of substantial interest in regulated business.

- (1) Every public officer or public employee who is an officer, director, agent, employee, or the owner of a substantial interest in any business entity which is subject to the regulation of the agency by which the officer or employee is employed, shall disclose any such position held and the precise nature and value of the public officer's or public employee's interest upon first becoming a public officer or public employee, and again whenever the public officer's or public employee's position in the business entity changes significantly or if the value of his interest in the entity is significantly increased.
- (2) The disclosure required under Subsection (1) shall be made in a sworn statement filed with:
 - (a) the state attorney general in the case of public officers and public employees of the state;
 - (b) the chief governing body of the political subdivision in the case of public officers and public employees of a political subdivision;
 - (c) the head of the agency with which the public officer or public employee is affiliated; and
 - (d) in the case of a public employee, with the immediate supervisor of the public employee.
- (3) This section does not apply to instances where the total value of the interest does not exceed

\$2,000. Life insurance policies and annuities shall not be considered in determining the value of any such interest.

- (4) Disclosures made under this section are public information and shall be available for examination by the public.

67-16-8 Participation in transaction involving business as to which public officer or employee has interest -- Exceptions.

- (1) No public officer or public employee shall participate in his official capacity or receive compensation in respect to any transaction between the state or any of its agencies and any business entity as to which such public officer or public employee is also an officer, director, or employee or owns a substantial interest, unless disclosure has been made as provided under Section 67-16-7.
- (2) A concession contract between an agency, political subdivision, or the state and a certified professional golf association member who is a public employee or officer does not violate the provisions of Subsection (1) or Title 10, Chapter 3, Part 13.

67-16-9 Conflict of interests prohibited.

No public officer or public employee shall have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.

67-16-10 Inducing others to violate chapter.

No person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this chapter.

67-16-11 Applicability of provisions.

The provisions of this chapter apply to all public officers and public employees.

67-16-12 Penalties for violation -- Removal from office or dismissal from employment.

In addition to any penalty contained in any other provision of law:

- (1) any public officer or public employee who knowingly and intentionally violates this chapter, with the exception of Sections 67-16-6 and 67-16-7, shall be dismissed from employment or removed from office as provided by law, rule, or policy within the agency; and
- (2) any public officer, public employee, or person

who knowingly and intentionally violates this chapter, with the exception of Sections 67-16-6 and 67-16-7, shall be punished as follows:

- (a) as a felony of the second degree if the total value of the compensation, conflict of interest, or assistance exceeds \$1,000;
- (b) as a felony of the third degree if:
- (i) the total value of the compensation, conflict of interest, or assistance is more than \$250 but not more than \$1,000; or
- (ii) the public officer or public employee has been twice before convicted of violation of this chapter and the value of the conflict of interest, compensation, or assistance was \$250 or less;
- (c) as a class A misdemeanor if the value of the compensation or assistance was more than \$100 but does not exceed \$250; or
- (d) as a class B misdemeanor if the value of the compensation or assistance was \$100 or less.

Amended by ch. 108, § 3, 2000 General Session.

67-16-14 Unethical transactions -- Duty to dismiss officer or employee -- Right to rescind or void contract.

If any transaction is entered into in violation of Section 67-16-6, 67-16-7, or 67-16-8, the state, political subdivision, or agency involved:

- (1) shall dismiss the public officer or public employee who knowingly and intentionally violates this chapter from employment or office as provided by law; and
- (2) may rescind or void any contract or subcontract entered into in respect to such transaction without returning any part of the consideration that the state, political subdivision, or agency has received.

